

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1867 of 2019 (O&M)
Date of Decision: 17.12.2019

Dr. Saurabh Goyal

.....Applicant

Vs.

Arun Goyal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Ms. Neha Anand Mahajan, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

CRM-23624-2019

This is an application for placing on record Annexures A-1 to A-8.

The application is allowed as prayed for.

Annexures A-1 to A-8 are taken on record.

CRM-A-1867 of 2019 (O&M)

Special leave to appeal has been sought against the judgment of acquittal dated 14.1.2019 whereby the Judicial Magistrate Ist Class, Ludhiana, while dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act'), has acquitted the respondents.

Proceedings were initiated on dishonour of cheque bearing No. 790308 dated 28.8.2013 for an amount of Rs. 15,00,000/- drawn on HDFC Bank.

The Judicial Magistrate has recorded the following reasons to dismiss the complaint:-

- 1) Complainant has failed to prove his case qua due execution of the cheque in question.
- 2) The basic requirement for the commission of offence under Section 138 of the Act is that the cheque should have been drawn by the accused for the discharge of any debt or liability. Since the complainant has failed to prove on record any debt or liability of the accused against which he had issued the cheque in question, the necessary ingredients of Section 138 of the Act are not complete.

The learned Magistrate has taken a reasonable and probable view on appreciation of evidence.

Learned counsel for the applicant has relied upon the judgment of the Apex Court in case of *M/s Haryana State Coop. Supply and Marketing Federation Limited versus M/s Jayam Textiles and another, AIR 2014 SC 1926* and the judgment of this Court in case of *Sandeep Kumar versus Rajiv Kumar and others 2003 (115) Comp Cas 892*, to contend that the complaint filed by the complainant through Power of Attorney was maintainable and there was no occasion for the trial Court to conclude that the Power of Attorney was defective.

Though the arguments raised by the learned counsel for the applicant as regards the finding of the trial Court holding the Power of Attorney as defective seems to be attractive, yet keeping in view the fact that the trial Court has decided the matter on merits without being

influenced by its own finding, this Court finds no justification to go into that point.

The complainant has filed to prove the due execution of cheque in question. Thus, the presumption enshrined under law is of no consequences to the applicant-complainant.

In criminal trial where the accused is subjected to intense scrutiny and his life and liberty is placed under scanner, it is all necessary that the execution of cheque against the said liability should be proved with evidence of irrevocable nature and of impeccable character. Mere production of cheque cannot make a case of applicant/complainant sacrosanct and absolute so as to exempt complainant from all blemishes and burdens. Cheque being an instrument thus, it becomes all important for the applicant/complainant to come up with cogent and convincing evidence.

The learned Magistrate has drawn the conclusion that it was incumbent upon the complainant to prove due execution of the cheque in question even though the signature had not been denied by the respondent-accused.

The Apex Court in ***John K. Abraham versus Simon C. Abraham and another (2014) 2 Supreme Court Cases 236***, has held as under:-

“It has to be stated that in order to draw the presumption under [Section 118](#) along with [139](#) of the [Negotiable Instruments Act](#), the burden was heavily upon the complainant to show that he had required funds for having advanced the amount; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.”

Learned counsel for the applicant, although made sincere attempt, yet failed to draw attention of the Court to any substantive error or perversity. Still further, the reasons which have been extracted above, appear to be probable and plausible. Hence, this Court is not inclined to interfere with the judgment of acquittal passed by the trial Court.

From the above, I do not find any ground to grant special leave to appeal. Therefore, finding no merit in the present application, the same is dismissed. Special leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

December 17, 2019

Gurpreet

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No