IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1494-2019
Date of Decision 30.10.2019

The Gurdaspur Central Cooperative Bank Ltd.

.......Applicant

Versus

Iqbal Singh .....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Paramjit Kaur Deol, Advocate, for the applicant.

HARNARESH SINGH GILL, J.

The present application under Section 378(4) Cr.P.C. has been filed by the applicant seeking special leave to appeal against the judgment dated 23.05.2019 passed by the Judicial Magistrate, Ist Class, Batala, vide which the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act'), has been dismissed and respondent-Iqbal Singh, has been acquitted of the charge framed against him.

2. Applicant-Bank preferred a complaint against respondent-Iqbal Singh with the averments that the respondent had raised a housing loan, but he failed to repay the same and in order to discharge his financial obligations, the respondent had issued cheque No. 32472 dated 10.05.2017 for Rs.2,22,381/- drawn on Gurdaspur Central Cooperative Bank,

Qudian Branch in favour of the applicant-Bank. When the said cheque was presented, it was returned back vide memo dated 10.05.2017 with the remarks `insufficient funds' and as such the said cheque got dishonoured.

3. In order to prove its case, the applicant-Bank, had examined CW1-Harwant Singh, being the authorized representative of the Bank besides tendering in evidence documentary evidence Ex.C1 to Ex.C8.

4. On the other hand, statement of the respondent under Section 313 Cr.P.C. was recorded, wherein he pleaded not guilty and claimed trial.

5. The trial Court carved out the following points in order to pass the final verdict:-

> "i) Whether the cheque in question has been issued by accused to discharge any legally enforceable liability?
>
> ii) Whether CW1 Harwant Singh is competent to depose on behalf of complainant Bank or not?
>
> iii) Whether the ingredients under Section 138 of the Negotiable Instruments Act are made out in the present complaint or not?"

6. After taking into consideration the arguments raised by the learned counsel. And also the record of the case, learned trial Court dismissed the complaint vide judgment dated 23.05.2019. Hence, the present application for grant of special leave to appeal.

7. I have heard the learned counsel for the applicant at length. It has been argued that the Bank had produced the

cheque which was kept as security alongwith other documents and the respondent had not denied his signatures on the cheque nor the loan amount had been denied. It is the case of the applicant-Bank that the respondent had admitted availing of the loan and submitting various documents. Thus, the learned trial Court has gravely erred in dismissing the complaint on the ground that the applicant had failed to prove that the cheque in question was issued by the respondent in order to discharge his legal liability.

8. It is further argued by the learned counsel for the applicant that the burden to prove was on the respondent that the cheque in question was issued by the respondent for security at the time of the disbursement of the housing loan and not for the purpose of discharging of legal liability and thus, the learned trial Court has erred in acquitting the respondent by not taking into account the presumption under Section 118 of the Act.

9. In the present case, the respondent had denied his signatures on the cheque in question and once there was denial of the signatures, the onus was on the applicant to establish that it was the respondent, who had put signatures on the cheque and that the cheque was issued in order to discharge his legal liability towards payment of due amount. Even the presumption under Section 139 of the Act will come into play once, the respondent admits his signatures on the cheque. In the present case, respondent-Iqbal Singh had denied his signatures on the cheque Ex.C3. Thus, as per settled law, no

presumption can be raised. Learned trial Court has noticed various material discrepancies in the version of the complainant-Harwant Singh (CW1) and the story put forth by the applicant-Bank in its complaint and the evidence is surrounded by doubts. Only on the basis of statutory presumptions, the respondent cannot be convicted. As per the settled law, the applicant is to establish its case beyond the shadow of reasonable doubt, which has not been done in the instant case.

10. In view of the above, there being no merit in the present application, the same is dismissed. Special Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

30.10.2019
ds

Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No