

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-71-MA-2015(O&M)

Date of Order:07.12.2019

Subhash Singla

..Appellant

Versus

M/s Krishan Gopal and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Punia, Senior Advocate, with
Ms. Harveen Kaur, Advocate
for the appellant.

Mr. Satyam Tandon, Advocate, for
Mr. J.S.Lalli, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

Leave to appeal has been sought against the judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Ludhiana, dismissing the complaint under Section 138 of the Negotiable Instruments Act, 1881, filed complaining dishonour of cheque for an amount of Rs.10,00,000/-, dated 13.09.2010, drawn on Punjab and Sind Bank, Model Town Branch, Ludhiana.

Complainant in very first paragraph of the complaint has averred that accused no.2 on behalf of accused no.1 took a friendly loan of Rs.10,00,000/- from the complainant and when the amount was demanded, a cheque in question was issued by accused no.2 on behalf of accused no.1. When the complainant appeared in evidence, he in cross-examination deposed as under:-

“I had never given any money and Rs.10 lacs in cash to accused in 2006 to 2010, neither it was any amount was given as a loan to the accused.”

Learned Judicial Magistrate also found that there is no document of the alleged friendly loan and no income tax record has been produced to prove that the aforesaid amount was ever reflected in the record.

On the basis of aforesaid finding, the Court held that the presumption under Section 139 of the Negotiable Instruments Act, 1881 stands rebutted and the onus shifted back on the complainant to prove his case beyond shadow of reasonable doubt. The Court also observed that when the complainant-appellant was cross-examined on source of money, he fumbled during deposition.

Along with the present appeal, application under Section 311 Cr.P.C. has been filed for producing the statement of accounts to prove that the amount to prove that the amount of Rs.10,00,000/- was transferred in favour of accused no.2.

This court has heard learned senior counsel for the appellant as well as counsel for the respondent.

From the reading of the application, it is apparent that no substantial reason for failure to produce statement of accounts has been given. What has been submitted is that the appellant could not produce the statement of bank before the trial court inadvertently although the statement of account was given to the counsel for the complainant in the trial Court.

In the considered view of this Court, such reason is not sufficient to permit the appellant to move an application for additional evidence.

Even if the aforesaid statement of accounts is taken into consideration, still it does not advance the case of the appellant. The

appellant had taken a positive stand while appearing in Court that he has never extended any loan to the accused between 2006 and 2010. Still further, on careful perusal of the statement of accounts that the loan of Rs.2,00,000/- was transferred on 21.07.2003, Rs.3,50,000/-, and another entry of Rs.2,00,000/- is of 28.07.2003 in favour of Kesari Gas Service, which is alleged to be a proprietary concern of accused no.1. Rs.50,000/- has been transferred on 02.02.2004 and again of Rs.50,000/- on 20.03.2004. The total amount comes to Rs.8,50,000/-. There is no explanation as to how the amount works out to Rs.10,00,000/-.

Further there is some evidence suggesting that the appellant as well as accused no.1 and 2 were jointly in the business of sale and purchase of the property.

In such circumstances, in absence of any definite material available on the record to prove that the amount in question was a friendly loan, it would not be appropriate to interfere in the judgment of acquittal. Jurisdiction of the Court while hearing leave to appeal is limited. In the absence of any substantive error or perversity in the order, the Court has no jurisdiction to interfere.

Hence, no ground to grant special leave to appeal is made out.

Dismissed.

December 07, 2019

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No