HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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218-CRM-A-1621-M-2017 (O&M)
Date of Decision: 22.11.2022
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Pawan Kumar ... Applicant

VS.

Kuldeep Singh ... Respondent

****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Rajesh Malik, Advocate for
Mr. Manoj Kr. Taya, Advocate for the applicant

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Sandeep Moudgil, J.

CRM-24022-2017

For the reasons mentioned in the application, the same is allowed and the delay of 17 days in filing the appeal is condoned.

CRM stands disposed of.

Main case

This application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 03.04.2017 passed by learned JMIC, Karnal (for short 'the trial court') vide which the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'the NI Act') has been dismissed and the respondent has been acquitted of all the accusations leveled against him on the ground of absence of oral as well as documentary evidence qua the existence of partnership between the parties.

The applicant filed a complaint alleging that the respondent used to deal in the business of selling ready-made garments under the name & style of "Shiv Shakti Garments, Nigdhu". The applicant came into his contact about 3-4 years back. The applicant agreed to the proposal of the respondent to start business of ready-made garments with him in partnership and as such he invested a huge amount in the said business but nothing was reduced into writing *qua* the said partnership. It has been further stated that they carried out said business smoothly w.e.f. 10th January 2013 to 10th September 2015 in a rented shop located in village Nigdhu. A lot of profit was gained. Thereafter, the said shop had been sold and a liability to pay Rs.4 lakhs was found as due against the respondent *qua* the investment made by the applicant as well as share of profits. It has been further stated that the respondent has failed to pay the said amount and when the applicant demanded his money back from him, he, in discharge of his legal liability, issued a cheque bearing no.000006 dated 25.09.2015 of Rs.4,00,000/- drawn at HDFC Bank Ltd., in favour of the applicant and assured that the cheque would be honoured as and when presented for encashment. However, the same on presentation was returned by the bank vide memo dated 01.10.2015with remarks "Payment stopped by drawer". After that, the applicant served a legal notice dated 07.10.2015 on the respondent but neither he gave any reply to the legal notice nor did he pay the cheque amount to the applicant and in this way, he has committed an offence under Section 138 of NI Act. Hence, the present complaint was filed, which has been dismissed by the trial court, vide judgment dated 03.04.2017.

Learned counsel for the applicant submits that the trial court has ignored the fact that the cheque in question relates to the account of the respondent and that respondent has admitted his signatures on the said cheque and, as such, the presumption under Section 139 of the NI Act is in favour of the applicant and the onus lies on the respondent to rebut the said presumption, however, he has failed to do so.

It is further averred that the trial court has wrongly accepted the explanation of the respondent that the signed cheque was stolen from his shop which is not acceptable as no businessman would keep the signed cheque in open and if it is stolen, he would not file any complaint. The said statement of the respondent is further falsified due to the reason that no reply to the legal notice was given by the respondent. As such the plea of defence has been wrongly accepted by the trial court.

Learned counsel for the applicant submits that the trial court has erred in drawing adverse inference against the applicant due to non-production of documentary evidence qua the partnership with the respondent. It is urged that registration of partnership is not mandatory and the non-registration of partnership would not render the firm as non-existent but only disqualifies their rights under the Contract Act.

Having heard ld.counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

The trial court rightly observed that the applicant has failed to bring on record any evidence to substantiate his version, nothing was reduced into writing qua the said partnership between applicant and respondent and the applicant himself has admitted the fact that there was no written contract of the partnership between him and respondent. Further, no person has been examined by the applicant, who was having knowledge about the partnership of applicant and respondent to show on record that they ever had worked together in partnership and were doing the business of ready-made garments together.

The trial court further observed and rightly so, that causal approach of applicant raises suspicion in the mind as neither, there is any record of settlement of accounts, nor of any loss & profits earned & suffered by the respondent and applicant in the said partnership. No efforts were made by the applicant for obtaining the possession of these documents i.e. bill book, accounts book which are alleged to be in possession of the respondent.

The trial court has rightly dismissed the complaint *inter alia* on the ground that there is nothing on record to prove the fact that the applicant had obtained any loan from the bank rather he, in his cross examination, has admitted that he does not have any proof of the same. The absence of any documentary proof qua his income also raises suspicion about his financial capacity to invest such a huge amount in some business.

In view of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court and as such the present application seeking leave to appeal is dismissed.

22.11.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*