HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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214-CRM-A-585-MA-2018

Date of Decision: 31.10.2022

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Anil Kumar ... Applicant

VS.

Randeep Singh ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Ashok Khubbar, Advocate for the applicant

Mr. Jogender Pundhir, Advocate for
Mr. Manoj Pundhir, Advocate for the respondent

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Sandeep Moudgil, J. (Oral)

This application has been filed under Section 378(4) CrPC seeking leave to file appeal against the judgment dated 03.10.2017 passed by the JMIC, Yamuna Nagar at Jagadhari, vide which the respondent has been acquitted of the notice of accusation served upon him on the ground that the respondent has rebutted the presumption under Section 139 of the Negotiable Instruments Act (in short, the NI Act).

A complaint was filed by the applicant/complainant, under Section 138 of the NI Act against the respondent-accused on the ground that the latter had borrowed a sum of Rs.2 lacs from him and had promised to repay the same, but he failed to do so. The respondent-accused, allegedly, in discharge of his debt liability towards the applicant-complainant, had issued a cheque bearing No.059414 dated 05.11.2012 in the sum of Rs.2 lacs drawn on Oriental Bank of Commerce, Yamuna Nagar but the said cheque was dishonoured by the Bank of respondent on 14.11.2012 with the remarks 'Account Closed'. Despite legal notice dated 19.11.2012 issued by the applicant-complainant, the respondent-accused failed to make the said payment. The applicant-complainant filed a complaint on 17.12.2012 which has been dismissed vide judgment dated 03.10.2017 by the trial court. Hence, this application for grant of leave to appeal.

Learned counsel for the applicant-complainant contended that the applicant-complainant has proved all the necessary ingredients of the offence punishable under Section 138 of the NI Act. He has further submitted that the signatures on the cheque are not being disputed by the respondent-accused and issuance of cheque has also been admitted by him and, as such, all material ingredients of offence have been fulfilled in the present case. It is further argued that the respondent-accused has not been able to prove the relationship with Jarnail Panjeta, to whom the respondent is alleged to have given the cheque as security, which was allegedly misused by the applicant-complainant. It is further the contention of the applicant-complainant that the trial court committed grave error in presuming that the respondent-accused has remitted presumption in favour of the applicant on the ground that the signature on the cheque stands admitted by the respondent-accused. Therefore, the impugned judgment deserves to be set aside.

On the other hand, learned counsel for the respondent-accused has contended that the cheque in question has been misused and the existence of legally recoverable debt and liability being an important ingredient of the offence in question does not stand fulfilled in the present case. Accordingly, he has argued that since the applicant-complainant has failed to establish the guilt of the respondent-accused in the present case, he has been rightly acquitted by the trial court.

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

The applicant-complainant allegedly gave Rs.2 lacs to the respondent-accused in May, 2012 and that too without interest. The applicant-complainant, is neither the relative nor a co-villager of the respondent-accused but, as claimed, knew him for the last 8 to 10 years, which is denied by the respondent-accused. There is no writing/acknowledgment or receipt to suggest that respondent borrowed the amount from the applicant-complainant, as alleged. The applicant-complainant has not even mentioned the date on which he allegedly advanced the amount and the duration for which it was given and that there were no prior money dealings between the parties.

The trial court has rightly observed, relying upon various case laws, that where the complainant fails to prove that he had advanced the amount to the accused and where no receipt or authenticated document was produced by the complainant to substantiate his claim and when there is no proof to prove loan transaction, viz. date of demand/disbursal of loan, the accused cannot be convicted only on the vague allegation.

The trial court was right to observe that the body of the cheque issued by the respondent, was filled at a different time and the cheque was signed at some other time as the ink of signature and writing on rest of the cheque are different which indicates that both acts did not take place at one point of time and thus this creates suspicion in the story of the applicant-complainant.

For the reasons afore-stated, this Court does not find any illegality and infirmity in the judgment passed by the trial court.

Accordingly, the application for leave to appeal is dismissed.

31.10.2022
V.Vishal

(Sandeep Moudgil)
Judge

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