HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****

218 **CRM-A-2365-MA-2017**
Date of Decision: 01.09.2022
****

Neetu ... Applicant

VS.

Nand Lal ... Respondent
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
****

Present: Mr. Sachin Mittal, Advocate for the applicant
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Sandeep Moudgil, J. (Oral)

This application for leave to appeal has been preferred by the applicant against the acquittal of respondent, vide judgment dated 25.08.2017 passed by the learned JMIC, Gurugram (for short, 'the trial court') in a complaint filed under Section 138 of the Negotiable Instruments Act by the applicant-Neetu.

Learned counsel for the applicant submits that the accused/respondent borrowed a sum of Rs.6,16,000/- in the month of November, 2012 for purchasing a house at Gurgaon. When the applicant/complainant demanded the money back, earlier excuses were made, later on, a cheque for an amount of Rs.2,00,000/- was issued which on presentation has been returned by the respondent's banker with remarks "Payment Stop". A complaint under Section 138 of the NI Act was made, which has been dismissed vide the impugned judgment.

I have heard learned counsel for the applicant and gone through the record and am of the considered view that this application cannot be entertained.

Learned trial court observed that the applicant/complainant did not mention anywhere in the complaint or in the affidavit that he had employed the respondent-accused against a salary of Rs.16,000/- per month and has no other source of income and as such it would not be acceptable that he could arrange the alleged amount out of such a small salary. Moreover, the applicant/complainant has also not mentioned the exact date of giving money and in his cross-examination, he has stated that the cheque was issued in October, 2012 against the loan which was to be advanced in November, 2012. How could applicant/complainant receive cheque in October, 2012 from the respondent with respect to discharge of loan liability of Rs.6,16,000/- which was not yet given and was given allegedly subsequently in November, 2012? It has also come on record that no document/receipt in writing was executed between the applicant/complainant and the respondent relating to advancement of loan amount and that no ITR/account books for the relevant period had been produced to reflect the amount of loan allegedly advanced. Accordingly, the transaction, if any, having taken place will fall under Section 269SS of the Income Tax Act. Therefore, the presumption raised in favour of the complainant under Sections 139/118 of the IT Act stands rebutted by the respondent. The plea of the defence that some cheques were stolen from the office of the respondent stands corroborated by DW1 as well as return memo CW2 instructing the bank to 'stop payment' of the cheque.

In view of the above discussion, I do not find any illegality and infirmity in the judgment passed by the learned trial court.

Accordingly, the prayer for grant of leave is rejected and the application for leave to appeal is consequently dismissed.

01.09.2022
V.Vishal

(Sandeep Moudgil)
Judge

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