

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-882-MA-2017
Date of Decision: 30.03.2022

M/s Pardeep Textile Agency

....Petitioner(s)

Versus

Baldev Vij

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Arora, Advocate, for the applicant.

JASGURPREET SINGH PURI, J.

The present application has been filed under Section 378(4) of the Code of Criminal Procedure for grant of special leave to appeal from the judgment of acquittal dated 02.02.2017 passed by the learned Judicial Magistrate Ist Class, Jalandhar by which the accused/respondent was acquitted under Section 138 of the Negotiable Instruments Act, 1881.

The brief facts of the case are that the applicant who is the complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Judicial Magistrate Ist Class, Jalandhar by alleging that the complainant/applicant had advanced a loan of Rs. 2,00,000/- on 01.10.2010 to the accused/respondent and in order to discharge his legally enforceable debt, the accused/respondent issued a cheque No.673811 date 01.01.2011 for Rs. 2,00,000/- drawn at Jammu & Kashmir Bank Ltd, Chaura Bazar, Ludhiana in favour of the complainant/applicant. Thereafter, when the cheque was presented it was

dishonoured with the remarks that the “Payment Stopped by Drawer”. Thereafter, notice was issued to the accused but he failed to make the payment.

The learned Judicial Magistrate Ist Class, Jalandhar vide impugned judgment had acquitted the accused/respondent on the ground that from the perusal of the record it was clear that although the accused/respondent had issued a cheque No.673811 dated 01.01.2011 for an amount of Rs.2,00,000/- but this was done in pursuance of an agreement. The advancement of loan was also by way of a cheque of Rs. 2,00,000/- and number of that cheque was 498300. In other words the accused/respondent had issued a cheque of Rs. 2,00,000/- in favour of the complainant/applicant on the basis of advancement of loan which was also by way of a cheque which was issued by the complainant for the same amount of Rs.2,00,000/-. Thereafter, the cheque by which it was stated that the loan was advanced which was issued by the complainant/applicant got dishonoured and, therefore, there was no advancement of loan in legal terms. The learned Judicial Magistrate came to the conclusion that since the cheque by which the loan was advanced itself got dishonoured, there was no legally enforceable debt against the accused/respondent person and even if the cheque issued by him has been dishonoured, the same will not fasten any liability on the accused since it was not a legally enforceable debt.

Learned counsel for the applicant/complainant has submitted that the respondent/accused has been erroneously acquitted by the learned Magistrate since there was a statutory presumption in favour of the applicant/complainant since the issuance of cheque by the respondent was admitted.

I have heard the learned counsel for the applicant.

The present application is for seeking grant of special leave to appeal from the judgment of acquittal dated 02.02.2017 passed by the learned Judicial Magistrate Ist Class, Jalandhar. In the present case, there are two agreements on the record i.e. Ex.D-3 and Ex. D-4. Agreement Ex. D-3 is dated 01.10.2010 and Ex. D-4 is dated 04.10.2010. A perusal of Ex. D-3 would show that the accused/respondent had issued a cheque No.673811 for an amount of Rs. 2,00,000/- dated 01.01.2011 drawn at Jammu & Kashmir Bank Ltd., Chaura Bazar, Ludhiana and there is nothing in this agreement pertaining to the cheque issued by the complainant for the purpose of advancement of loan but it is only stated that he has paid the aforesaid amount as a friendly loan. A perusal of the agreement dated 04.10.2010 (Ex. D-4) would show that it has been stated that the applicant/complainant has paid an amount of Rs. 2,00,000/- by way of cheque No.498300 of Punjab National Bank dated 01.10.2010 and it has been further stated that the respondent/accused has also given a cheque of Rs. 2,00,000/-. However, the details of the cheque are not mentioned in the agreement and it is also stated in the last part of the agreement that the first agreement dated 01.10.2010 stands cancelled.

The aforesaid would show that the applicant had although given a cheque of Rs. 2,00,000/- to the accused and the accused had also given a cheque of Rs.2,00,000/- to the applicant and both the cheques were dishonoured. Therefore, the argument raised by the learned counsel for the applicant that there was a statutory presumption in favour of the applicant would not be sustainable in view of the fact that when both the cheques have been dishonoured, then the accused/respondent has been able to rebut

the statutory presumption since he has been able to show that there was no legally enforceable debt.

Learned Judicial Magistrate, Ist Class, Jalandhar has returned a finding that the accused has proved that he has not received the payment of Rs. 2,00,000/- from the complainant as the cheque No.498300 dated 01.10.2010 was dishonoured and the accused had mentioned this fact in reply to legal notice Ex. D-10 dated 21.10.2010 to the complainant giving reference to the agreement dated 01.10.2010 regarding dishonour of the cheque and for return of the security cheque i.e. cheque No. 673811 dated 01.10.2010 which is the subject matter of the present case.

In view of the aforesaid facts and circumstances, this Court is of the considered view that the learned Judicial Magistrate Ist Class, Jalandhar has rightly concluded that the respondent/accused was fully able to prove and rebut the statutory presumption in favour of the applicant by adducing evidence that there was no legally enforceable debt against the respondent /accused and, therefore, the respondent/accused was rightly acquitted.

Therefore, this Court is of the view that no illegality or perversity can be found in the judgment passed by the learned Judicial Magistrate Ist Class, Jalandhar and no ground is made out for grant of any special leave to appeal to the applicant against the order of acquittal.

Consequently, finding no merit in the present application, the same is hereby dismissed.

30.03.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No