

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227

CRM-A-814-2019

Date of Decision: 27.09.2022

Kamla

... Applicant

VS.

Rakesh Dubey

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RS Hooda, Advocate for the applicant

Sandeep Moudgil, J. (Oral)

This application for leave to appeal has been filed by applicant-complainant against acquittal of the respondent vide judgment dated 20.02.2019 passed by the learned JMJC, Faridabad (for short, 'the trial court') whereby the complaint under Section 138 of the Negotiable Instruments Act (in short, the NI Act) has been dismissed.

The brief facts of the present case are that a complaint has been filed by applicant-complainant with the allegations that applicant and respondent werewell known to each other being familiar relations. In the month of March, 2016, the applicant approached the respondent for financial assistance of Rs.22 lakhs as friendly loan. The applicant-complainant arranged said amount from her relatives and gave the said amount of Rs.22 lakhs to respondent. At that time, respondent assured to repay the said amount within three months. After stipulated period of three months, applicant-complainant approached the respondent and demanded the said amount, but respondent firstly avoided. It is further stated that at last in the month of August 2016, respondent after admitting his legal debt and liability and to discharge the part liability, issued cheque no. 037520 dt. 30.08.2016 for 9

lakhs drawn on State Bank of India, Ballabgarh in favour of applicant. When applicant-complainant presented the cheque in question for encashment, same was returned back unpaid with the remarks of "Funds Insufficient" vide return memo dated 23.11.2016. Thereafter, legal notice was sent to respondent calling upon him to make the payment but as per applicant-complainant no payment was made. Hence, the present complaint was filed.

Learned counsel for the applicant-complainant contended that applicant-complainant has been able to prove his case successfully. He contended that all the ingredients of Section 138 of the Act, have been duly complied with. He argued that the applicant-complainant gave an amount of Rs.22,00,000/- to the respondent as friendly loan and respondent in order to discharge his liabilities issued cheque in question for an amount of Rs.9,00,000/- but same was returned dishonored when presented. He further argued that no witness was examined by the respondent to controvert the matter.

I have heard learned counsel for the applicant and gone through the record and am of the considered view that there is no fault in the judgment passed by the learned trial court.

It has come on record that in the cross-examination, the application has deposed that he was not having funds to advance the huge amount of Rs.22 lakhs. The applicant has made a contradictory statement inasmuch as at one point, she deposed that she took money from her relatives to advance loan to the respondent and in her cross-examination, she took stand that the money was arranged by selling buffaloes and trucks. She does not file ITR and the loan advanced to the respondent was without any interest.

She further deposed that no receipt or document was executed for advancing the huge amount of loan of Rs.22 lakh. She has neither examined any witness nor produced any document to prove the loan transaction and that she had advanced the loan in cash. The applicant has even failed to prove the source of income nor has she named any witness in whose front the loan was advanced to the respondent. Even the friendly relationship between the parties is not proved. Therefore the respondent has raised a probable defence and rebutted the presumption of Section 118 and 139 of the NI Act and as such the onus shifts back to the applicant to prove that the loan was actually advanced to the respondent.

Therefore, the trial court has rightly held that the respondent has been able to adduce a probable defence that the accused owes no liability towards complainant and cheque in question was not issued to the applicant to discharge any legally enforceable liability.

In view of the above discussion, this Court does not find any illegality in the judgment passed by the learned trial court.

Accordingly, the application for leave to appeal is hereby dismissed.

27.09.2022

V.Vishal

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No