

**253 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-242-2022

Date of Decision: 26th July, 2022

Sham Dass Handa

... Applicant

Versus

Din Dayal Juneja

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Naveen Siwach, Advocate for the applicant.

AVNEESH JHINGAN , J.(Oral)

1. This is an application for grant of leave to appeal against judgment of acquittal in Complaint No. 1687/2018, under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').
2. As per the case set up, the applicant had advanced a loan of Rs.2,00,000/- to the respondent. For discharging the liability cheque bearing No. 013216, dated 12th April, 2018 was issued.
3. On presentation, the cheque was returned on 18th April, 2018 with the remarks 'insufficient funds'. The complainant to prove his case exhibited original cheque, Bank memo, Legal notice, postal receipt and rent agreement.
4. The respondent took a defence that security cheque was misused as out of Rs.2,00,000/-, Rs. 1,10,000/- was repaid through RTGS/NEFT. The amount of Rs.2,00,000/- was not due on the day of presentation of cheque. The complainant in cross-examination admitted the fact of receiving of Rs. 1,10,000/- from the respondent on 17th March, 2017

and on 8th March, 2018. The defence of repayment of Rs.1,10,000/- was also taken in reply to the legal notice. In the cross-examination, complainant admitted that the said fact was not mentioned in the complaint. During the trial, complainant tried to improve his version by relying upon the rent agreement to show that Rs.1,10,000/- was received from the respondent towards the rent due and was not for the loan.

5. The trial Court, considered that in the complaint, it was specifically pleaded that loan of Rs.2,00,000/- was advanced to accused. During the cross-examination also the complainant admitted that the amount of Rs.1,10,000/- was received from the concern Ganpati Seeds Firm run by the accused but no explanation was putforth that against which liability the payment was received.

6. The rent agreement between the Ganpati Seeds Firm and applicant was produced only at the time of final argument as mark 'A' but was not duly proved. It was not considered as admissible evidence.

7. Learned counsel for the applicant argues that the trial Court erred in acquitting the respondent. The signatures on the cheque were admitted, the loan transaction was not disputed by the respondent.

8. The respondent was successful in rebutting the presumption under Sections 118 and 139 of the Act. He was successful in proving the payment of Rs.1,10,000/- made to the applicant through banking transactions. The applicant failed to produce evidence to establish that a sum of Rs.2,00,000/- was due on the date of presentation of the cheque. A last effort was made at argument stage by producing document mark 'A' which was not duly proved and rightly not considered by the trial Court.

9. No case is made out for grant of leave, as no legal or factual error, much less perversity has been pointed out in the impugned judgment.
The conclusion arrived at by the trial court is plausible reason.
10. The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

26th July, 2022
Parveen Sharma

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No