HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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226 **CRM-A-2179-2019**

Date of Decision: 25.08.2022

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Sanjay ... Applicant

VS.

Anil Yadav ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Rakesh Dhiman, Advocate for the applicant

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Sandeep Moudgil, J. (Oral)

This is an application filed by the applicant-complainant seeking leave to appeal against the judgment of acquittal of the respondent vide judgment and order dated 23.07.2019 passed by the learned JMIC, Gurugram whereby the complaint under Section 138 of the Negotiable Instruments Act (in short, the NI Act) has been dismissed.

The present complaint was filed by Sanjay complainant who has alleged that out of friendly relations with the respondent-accused, on his expressing his need and requirement, he gave loan of Rs.10,00,000/- in the month of August, 2016 which the respondent assured to return in the month of October, 2016. In order to discharge his legal liability, the respondent issued cheque No.073010 dated 05.10.2016 amounting to Rs. 10,00,000/- in favour of applicant, who had presented the said cheque for realization of its amount in his account but the said cheque was returned by the banker of the accused/respondent vide memo dated 24.10.2016 with the remark "Fund Insufficient". Thereafter, statutory legal notice was issued on 22.11.2016, calling upon the respondent to clear the cheque amount but he never paid. Accordingly, the present complaint was filed under Section 138 of the NI

Act. However, the learned JMIC, Gurugram dismissed the said complaint filed by the applicant vide judgment dated 23.07.2019 and acquitted the respondent of the charges framed against him.

I have heard learned counsel for the applicant and find that there is no illegality in the judgment passed by learned trial court.

Learned trial court has returned a finding that the signatures on the cheque are not disputed by the respondent and as such onus lies on the respondent to rebut the presumption existing in favour of the applicant. In cross-examination, the applicant deposed that he gave friendly loan of Rs.10 lakh to respondent in August, 2016 which was to be returned in October, 2016. On the contrary, the respondent denied that he ever borrowed any money or issued any cheque. Rather the respondent had given two blank signed cheques to one Rajbir to be given to Vikram as security for loan of Rs.23 lakh which was obtained by Rajbir from Vikram and as such it is his contention that the cheque has been misused by the applicant. It has also come on record that there is no friendly relationship between the parties and the financial capacity of the applicant is also disputed.

It is well settled that mere acceptance of signatures is not 'admission' and the onus to prove the enforceability of debt lies with the complainant (applicant) only. Further, if the presumptions under Section 138 & 139 of the NI Act are rebutted by the defence (respondent), then it is for the complainant (applicant) to prove his case beyond all reasonable doubts, which the applicant has miserably failed to do. Moreover, the respondent is only required to raise a probable defence in his favour and the same is required to be rebutted on 'preponderance of probabilities' under Section 138 and 139 of the NI Act.

No receipt/pronote or any other document was executed for lending loan of huge amount of Rs.10 lakhs, nor any interest was charged from the respondent, who is not closely related to the applicant. The applicant has chosen not to transfer such huge amount of Rs.10 lakh from his bank account into the account of the respondent nor there was any witness to the said transaction. In such circumstances, where the complainant fails to prove that he had advanced the amount to accused without substantiating his claim by way of receipt or authenticated document, the accused cannot be convicted merely on bald allegations of the complainant/applicant.

The applicant has not been able to prove the source of amount loaned and has not produced any income tax return for the relevant year showing to have lent such a huge amount to the respondent. Where the complainant could not prove the transaction or source from which he/she had so much of money to advance, the conviction under Section 138 of the NI Act cannot be ordered.

Learned trial court has also rightly held that the signature on the cheque and the rest of the body of the cheque is filled in different inks, which creates suspicion in the story of the applicant.

In view of the above discussions, I do not find any illegality in the judgment/order of acquittal of respondent passed by the learned trial court.

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

25.08.2022
V.Vishal

(Sandeep Moudgil)
Judge

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