HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

226 **CRM-A-794-2019**

Decided on 12.09.2022

****

Vijay Kumar ... Applicant

VS.

State of Haryana & Ors. ... Respondents

****

Coram: Hon'ble Mr. Justice Sandeep Moudgil

****

Present: Mr. Jagjit Gill, Advocate for the Applicant

****

Sandeep Moudgil, J.

This application has been filed by the applicant seeking leave to appeal against the judgment dated 16.10.2018 passed by JMIC, Sirsa (in short the trial court) vide which the complaint filed against the respondents under Section 138 of the Negotiable Instruments Act (in short the NI Act) has been dismissed.

A complaint was filed alleging that the applicant was having cordial friendly relations with the respondents being son of his close friend and the respondent/accused approached him for advancement of Rs.8,00,000/- for his business purpose on 24.05.2015 and assured to repay the said amount after one year. The applicant paid the same to respondents on 25.05.2015 through cheque of Rs.8,00,000/- bearing No.804094 dated 25.05.2015. After expiry of one year, the respondents did not return the said loan amount. The applicant went to the shop of the respondents and raised the demand of Rs.8,00,000/-. The respondents in discharge of his pre-existing legally enforceable liability, issued a post dated cheque of Rs.8,00,000/- bearing No.986235 dated 08.06.2016 in favour of the applicant and also admitted his liability by giving a writing that he has taken interest free loan of Rs.8,00,000/- from the applicant. The applicant presented said cheque for encashment but the same was returned unpaid by the bank with remarks "Account Closed". The applicant sent the notice dated 29.06.2016 to respondents demanding the payment of cheque amount but respondents did not make the payment. The applicant prayed for summoning and punishing the respondents for commission of offence punishable under Section 138 of the NI Act. The respondents appeared and tendered his preliminary and was ultimately summoned to face trial vide order dated 09.08.2016. However, the complaint was dismissed by the trial court vide impugned judgment.

The learned trial court after going through the evidence and upon hearing the parties, framed the following two points for determination:-

1. Whether applicant advanced a friendly loan of Rs.8,00,000/- to accused and received cheque in question for repayment of the said loan?
2. Whether accused is guilty for commission of offence punishable under section 138 of N.I. Act?

Having heard learned counsel for the applicant, I am of the view that this application deserves to be dismissed.

Learned trial court did not find favour with the argument raised by the respondents that the applicant has not complied with provisions of Section 141 N.I. Act as it has nowhere been alleged in the complaint that the respondent namely Mohit Kesra was in-charge and responsible for the conduct of business of respondent no.1 and that the applicant has failed to show whether the respondent No.1 i.e. M/s Lohiya Steel Traders is proprietorship concern or partnership firm, on the ground that title of the complaint duly shows that the respondent No.1 is a proprietorship concern of respondent No.2. It is well settled that a proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a Company. Company in terms of the explanation appended to Section 141 of the Negotiable Instruments Act, means any body-corporate and includes a firm or other association of individuals.

Secondly, the learned trial court while relying upon the report Ex.DW1/B of the Hand Writing Expert (DW1) in relation to the body writings of Ex.PW4/B printed/written later on above the already existing signature of Mohit (respondent No.2) obtained on a blank paper, rightly observed that report of the Hand Writing and Finger Print Expert coupled with the fact that the cheque number in the aforesaid document was written with pen and the rest of the matter was typed and rightly held that the same puts a doubt on the veracity of the aforesaid document because had the document Ex.PW4/B given as alleged acknowledgment of the loan amount in question, then the entire matter would either have been typed or hand written.

Moreover, the statement of account of respondents proved on record as Ex.P12, reveals that cheques bearing no. 986238 and 986239 were used on 25.08.2015 and 22.01.2016 respectively and those cheques are prior in number to the cheque in question which is bearing no.986235 and the same is alleged to have been given by the respondents on 2.06.2016. Learned trial court rightly observed that it is highly improbable that the cheques which were later in number to the cheque in question would be used by the respondents prior in time.

The learned trial court is further right in observing that the document Ex.PW4/B as relied upon by the applicant cannot be considered to be a genuine document nor the statements of account Ex.P1 and Ex.P11 are of any benefit to the applicant to show alleged advancement of loan because the entry showing credit of Rs.8,00,000/- by way of cheque no.804094 does not prove that the said amount was withdrawn by the respondents on account of friendly loan because the withdrawal entry of 25.05.2015 is of self and since the applicant has failed to produce his ITR or any authenticated document to show alleged advancement, the possibility of the amount in question being credited in account of accused in lieu of some other transactions between the applicant and the father of the respondent in the back drop of admitted close friendly relationship between father of respondent and applicant, cannot be ruled out. Thus, it was rightly held that the applicant has failed to prove that he advanced alleged friendly loan of Rs.8,00,000/- to the respondents. Accordingly, the first point of determination was answered in favour of respondents and against the applicant.

As regards, the second point it was rightly held that since cheque in question was not issued by the respondents for discharge of financial liability, no legal liability can be fastened upon the respondents to ensure payment of cheque or to make good the payment of amount as the very basic ingredient of Section 138 of the NI Act stands unproved. Accordingly, the second point was also answered in favour of the respondents.

In view of the above, there is no merit in the present application and the same is hereby dismissed.

12.09.2022
V.Vishal

(Sandeep Moudgil)
Judge

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