

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-A-104-2019 (O&M)

Date of Decision: 07.09.2022

Satbir Singh

... Applicant

VS.

Meenu

... Respondent

CRM-A-152-2019

Satbir Singh

... Applicant

VS.

Fakir Chand

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Keshav Pratap Singh, Advocate for the applicant

Sandeep Moudgil, J. (Oral)

This order shall dispose of the above-cited two applications being of similar nature and the complaint has been filed by applicant Satbir Singh in both the complaints. For the sake of facts and order, CRM-A-104-2019 is treated as the lead case.

This application for leave to appeal has been filed by applicant-Satbir Singh against the acquittal of the respondent ordered, vide judgment dated 16.10.2018 passed by the learned JMJC Hisar (for short, 'the trial court') whereby respondent/respondent has been acquitted for the offence under Section 138 of the Negotiable Instruments Act.

The brief facts of the complaint are that respondent entered into an agreement to sell his agricultural land measuring 5 kanal 2.5 marla, situated at village Balak, Sub-Tehsil Barwala, District Hisar, with the applicant

alongwith one Vikas s/o Tejpal for an amount of 50,50,000/-, vide agreement to sell dated 29.1.2014. At the time of agreement to sell, an amount of 40,50,000/- was paid to the respondent's husband as advance and rest of the amount of Rs.10 lacs was to be paid on or before 27.7.2015 i.e. on the date fixed for getting the sale deed executed and registered. On 27.7.2015, respondent did not turn up in the office of Sub-Registrar, Hisar, to get the sale deed executed and registered in favour of the applicant as well as co-purchaser Vikas. Thereafter, applicant visited the respondent several times to get the sale deed executed and registered but respondent failed to get the sale deed executed in favour of the applicant. After several visits, the applicant and his co-purchaser Vikas informed the respondent's husband to take up the matter in the Court and then respondent's husband disclosed that he could not get the sale deed executed and registered because he had already sold that land to one Savitri Devi w/o Rajesh Kumar, R/o Rishi Nagar, Hisar. Thereafter, agreement to sell was cancelled and a writing to this effect was entered on the foot of the agreement dated 29.1.2014 which was signed by the respondent in the presence of the witnesses and at that time respondent/accused was also present there. It is further averred that for the repayment of earnest money of Rs.40,50,000/-, respondent alongwith her husband issued three cheques in favour of the applicant and his co-purchaser Vikas. Out of these three cheques, one cheque bearing no.813667 dated 11.12.2016, amounting to Rs.16 lacs drawn on State Bank of Patiala, Hisar, was issued by respondent's husband (respondent/accused in CRM-A-152-2019) in favour of applicant whereas Meenu being his guarantor, issued two other cheques, i.e., one bearing no.814518 dated 11.12.2016, amounting to Rs.10 lacs drawn on State Bank of

Patiala, Hisar in favour of applicant and second cheque bearing no.814517 dated 15.12.2016, amounting to Rs.14,50,000/- drawn on State Bank of Patiala, Hisar, in favour of co-purchaser Vikas. The aforesaid three cheques were issued by respondent and her husband Fakir Chand, against the above detailed existing, outstanding and legally enforceable liability with the assurance that the same will be honoured as and when presented in the Bank. But, when, applicant presented the cheque no.813667 dated 11.12.2016, amounting to Rs.16 lacs, drawn on State Bank of Patiala, Hisar, in his account for collection, it was dishonoured, with the remarks "Funds Insufficient", vide memo dated 15.12.2016. Thereafter, a legal notice dated 3.1.2017 was sent to respondent through registered post on 4.1.2017, but applicant neither received unserved notice nor its AD, meaning thereby service got effected. But, despite notice, respondent did not make the payment of cheque in question. Resultantly, the complaint was filed which has been dismissed by the trial court vide impugned judgment.

I have heard learned counsel for the applicant and gone through the record and am of the considered that there is no merit in the present application(s).

The learned trial court has rightly observed that firstly, the blank signed cheque was issued by the respondent which is of the same cheque book of respondent Meenu and the number of this cheque is also mentioned in the cancellation report of agreement to sell. Moreover, the agreement, Ex.C1, is not an executed document with the respondent and does not bear her signatures, nor there is signature on the cancellation report of the agreement to sell and the two cheques, in question, were related to the respondent-Meenu

which creates doubt in the version of the applicant. Secondly, the affidavit in the shape of agreement to sell is not notarized and there are certain hand written works on the agreement to sell which is otherwise a computer printed document. Thirdly, the way the payment of earnest money of Rs.40,50,000/- has been made as against the total consideration of Rs.50,50,000/-, also creates serious doubts as generally no party pays more than half of the total sale consideration as earnest money. Fourthly, the assertion made by the applicant that respondent Fakir Chand did not appear. It is relevant to highlight that for the period from 27.07.2015 to 01.12.2016, the applicant did not take any legal action against the respondent for more than 17 months also falsifies the allegations of the complainant/applicant made in the complaint.

In view of the above, I do not find any impropriety and illegality in the judgment passed by the learned trial court.

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

07.09.2022
V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No