HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-29157-2018 IN/AND
217-CRM-A-1703-MA-2018
Date of Decision: 20.12.2022

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Satya Dev ... Applicant

VS.

Sanjay Malik ... Respondent

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CRM-29504-2018 IN/AND
CRM-A-1762-MA-2018

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Satya Dev ... Applicant

VS.

Sanjay Malik ... Respondent

****

CRM-31887-2018 IN/AND
CRM-A-1904-MA-2018

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Satya Dev ... Applicant

VS.

Sanjay Malik ... Respondent

****

CRM-32387-2018 IN/AND
CRM-A-1969-MA-2018

****

Satya Dev ... Applicant

VS.

Sanjay Malik ... Respondent

****

CRM-33198-2018 IN/AND
CRM-A-1980-MA-2018

****

Satya Dev ... Applicant

VS.

Sanjay Malik ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. RS Athwal, Advocate for the applicant

Mr. Arshdeep Singh, Advocate for the respondent

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Sandeep Moudgil, J.

CRM-29157-2018 IN CRM-A-1703-MA-2018
CRM-29504-2018 IN CRM-A-1762-MA-2018
CRM-31887-2018 IN CRM-A-1904-MA-2018
CRM-32387-2018 IN CRM-A-1969-MA-2018

CRM-33198-2018 IN CRM-A-1980-MA-2018

For the reasons mentioned in the applications, the same are allowed and the delay of 22 days in filing the appeals is condoned.

CRMs stand disposed of.

Main case

This order shall dispose of the above-cited applications under Section 378(4) CrPC which have been filed by the applicant seeking leave to appeal against the judgment dated 05.05.2018 passed by learned JMIC, Faridabad vide which the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (in short, the NI Act) has been dismissed and the respondent has been acquitted of all the accusations leveled against him. For the purpose of facts and order, CRM-A-1703-MA-2018 is being treated as the lead case.

A complaint was filed by the applicant Satya Dev alleging that the respondent took a friendly loan of Rs.3 lacs from the applicant through cheque No. 387883 dated 09.05.2010, and promised to return the said loan within one year. Thereafter, respondent paid Rs. 50,000/- on 09.02.2011 vide cheque No.767775 dated 07.02.2011 and further promised to return the balance amount within 3-4 months. Respondent failed to return the said loan and after several requests, he issued cheque in dispute i.e. cheque bearing No. 000185 dated 01.06.2016 for Rs. 50,000/- as part payment in the month of May 2016 which was dishonoured on its presentation. Resultantly, complaint was filed, which has been dismissed.

Learned counsel for the applicant argued that respondent has misconceived the position of law and has filed the present application by giving incorrect interpretation to this law. The respondent earlier also moved an application dated 06.10.2016 and submitted the payment by way of a bank draft and prayed for a compromise. This shows that respondent had admitted the fact that he issued cheque in question and has committed the offence. He also argued that the law of limitation bars the filing of suit for recovery of debt which is already time barred and it does not bar the making of the payment after the period of limitation. He also argued that once the cheque was delivered, may be after the expiry of the limitation of the original debt, the delivery of the cheque amounted to payment and the payment was a valid payment of a valid amount. Reliance has been placed on Crl.Appeal No.1760-1761 of 2022 (Yogesh Jain vs. Sumesh Chadha) decided on 10.10.2022.

Learned counsel for the respondent argued that respondent filed an application under Section 239 CrPC seeking his discharge. He urged that it is settled law that the provisions under Section 138 of NI Act can be invoked only when the cheque has been issued for discharge of a valid debt or liability and limitation period to be reckoned for legally enforceable debt for the purpose of Section 138 of NI Act is three years from the date on which the cause of action had arisen. In the instant case, the alleged debt against which the applicant claims to have received the cheque in question is not a legally enforceable debt, as such, in the present case, cause of action had arisen on 05.06.2014 and, not in the month of August 2016. Reliance has been placed on Bhushan Kumar vs. State of NCT of Delhi, 2012 AIR SC 1747, Rajeev Ranjan Sinha vs. Sushil Kumar Saxena & Ors. 2014(3) SCC 190 (NI), Prajan Kumar Jain vs. Ravi Malhotra, 2011 (1) Bankmann 215, Wilson Mathew vs.

State of NCT of Delhi & Anr. 2015 (224) DLT 291, Punjab National Bank vs. K.L. Malhotra 1995(110) PLR 5.

Having heard ld.counsel for the parties and after going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

It is evident that the alleged loan was given by the applicant to the respondent in the year 2010 and respondent made part payment in the year 2011 and respondent issued cheque in question in the month of May 2016. A perusal of above said facts reveals that the alleged loan for the repayment of which, it is alleged that the cheque was issued, cannot be said to be a legally recoverable debt in terms of Section 138 of NI Act which clearly provides that the cheque must be drawn on an account maintained by the drawer for discharge of whole, or in part, in any legal debt and other liability. It is thus established that the debt for the recovery of which cheque is to be issued must be a legally recoverable debt. The trial court has rightly taken a view that the debt for the discharge of which this cheque in question, was issued, was not a legally recoverable debt as the same was advanced in the year 2010 and for recovery of any amount the period of limitation prescribed by Limitation Act is three years. Therefore, the alleged debt became a time barred debt.

This Court in **Punjab National Bank Vs. M/s K.L.Malhotra and ors. SLJ 95(3) Reports P&H 1800** held that the acknowledgement for extending the period of limitation should be made before the expiry of period of limitation and that should be clear and unambiguous. Just because accused has issued cheque in the year 2016 is not a ground to presume that he has acknowledged his liability to repay the loan and the period of limitation is extended therefrom.

It is well settled proposition of law that the cheque issued in discharge of a time barred debt is not a legally enforceable debt and accused is liable to be acquitted as has been held in Rajesh Devi vs. Satbir, 2020 (3) RCR (Crl.)372, K. Kurnaravel vs. R.P. Rathinam 2011 (2) Bankmann 511, Vijay Polymers vs. Vinnay Aggarwal 2009(162) DLT 23.

In view of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court and as such the present application seeking leave to appeal is ordered to be dismissed.

20.12.2022
V.Vishal

(Sandeep Moudgil)
Judge

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