

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224

CRM-A-1667-MA-2018

Decided on 12.09.2022

Harwinder Singh

... Applicant

VS.

Pardeep Kumar @ Kaddu

... Respondent

CRM-A-1684-MA-2018

Harwinder Singh

... Applicant

VS.

Pardeep Kumar @ Kaddu

... Respondent

CRM-A-1883-MA-2018

Harwinder Singh

... Applicant

VS.

Pardeep Kumar @ Kaddu

... Respondent

Coram: Hon'ble Mr. Justice Sandeep Moudgil

Present: Mr. Amit Goyal, Advocate for the Applicant

Sandeep Moudgil, J.

This order shall dispose of the above-cited applications seeking leave to appeal against the judgments dated 04.05.2018 passed by the learned JMIC, Bathinda in the complaints filed by the applicant under Section 138 of the Negotiable Instruments Act (in short, the NI Act). CRM-A-1667-MA-2018 is being treated as the lead case.

Concisely, the facts of the present complaint are that respondent borrowed friendly loan of Rs.6,00,000/- from applicant. The respondent issued three cheques in discharge of his legal liability i.e. bearing No.157971 dated 29.01.2015, cheque No.157973 dated

presented the cheques but the said cheques got dishonoured with remarks 'Insufficient Funds'. The applicant got issued a legal notice dated 05.02.2015 upon the respondent but the respondent failed to make the payment. A complaint was filed and the respondent was summoned and thereafter, after hearing both the parties, the learned JMIC, Bathinda, dismissed the complaint(s) filed by the applicant/complainant on 04.06.2018.

Having heard learned counsel for the applicant and after going through the record file, I find that there is no merit and the instant application(s) deserve to be dismissed.

Firstly, learned trial court has rightly held that there is material contradiction with regard to the statement of the applicant/complainant pertaining to period of giving loan to accused as at one place, he has deposed that the amount in question was given to respondent in year 2012 and on the other hand, the applicant deposed that he sold his land in year 2006 and the amount in question was given in year 2006. Learned trial court has rightly observed that even if it is considered that the alleged loan was advanced in the year 2006, then the present complaint is clearly barred by law of limitation as the cheques issued six years after the so-called liability towards time barred debt, the offence under Section 139 of the NI Act is not made out. Secondly, the learned trial Court has rightly observed that the land, if any, sold in the year 2006 was for a total sale consideration of Rs.4,91,500/- and the applicant has not explained the source from where the remaining amount of Rs.1,09,500/- was arranged. Moreover, it has also not been clarified whether the applicant kept the said amount of sale consideration in his

possession for such long period of six years or he deposited the same in bank and withdrew it for giving it to the respondent in 2012. Thirdly, it has also come on record that the disputed date writing marked as Q1 is not written in continuity at the same time with rest of the body writing and signature on cheque Ex.C1 as the handwriting expert DW1 has stated that the disputed date writing marked as Q1 ('29.01.2015' written on the cheque Ex.C1) is not similar with the specimen writing marked S1 to S4 (the handwriting of accused) in its basic writing characteristics. Hence the disputed writing marked as Q1 had not been written by same person (Pardeep Kumar) whose specimen writings are marked as S1 to S4. The learned trial Court rightly held that the facts and circumstances of the case create more reasonable doubt over the version of the applicant and make the version of the respondent more credible in proving that the cheques in question were not issued in discharge of any legal and enforceable liability and as such the respondent has stood successful in rebutting the presumptions under Section 118 and 139 of the NI Act.

For the reasons aforestated, there is no legal infirmity or illegality in the judgment passed by the learned trial.

Accordingly, these applications seeking leave to appeal against the judgments dated 04.05.2018 passed by the learned JMIC, Bathinda are dismissed.

12.09.2022
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No