IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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2023:PHHC:086201

CRM No.1899 of 2019 in/and
CRM-A No.273 of 2019

Date of decision: July 6th, 2023

M/s Lachman Dass Rajinder Kumar

.....Appellant

Versus

Gurdeep Singh

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. L.S. Sidhu, Advocate
for the applicant-appellant.

MANJARI NEHRU KAUL, J. (ORAL)

CRM No.1899 of 2019

Prayer in this application is for condonation of delay of 205 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported the affidavit of the applicant-appellant, the same is allowed.

Delay of 205 days in filing the appeal stands condoned.

CRM-A No.273 of 2019

The appellant-complainant (hereinafter referred to as 'complainant') is impugning the judgment dated 05.02.2018 passed by the learned Chief Judicial Magistrate, Mansa, whereby the respondent-accused (hereinafter referred to as 'accused') has been acquitted of the charges framed against him in a criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. As per the allegations levelled in the complaint, the accused took a friendly loan from the complainant in the sum of ₹5 lakh through

cheque on 30.11.2013, to get his land redeemed and thereafter, again on 13.05.2014, the accused borrowed another sum of ₹1,80,000/- from the complainant for purchasing a tractor. In discharge of his liability, the accused issued a cheque bearing No.450893 drawn on HDFC Bank, Water Works Road, Mansa. On presentation of the cheque by the complainant, it was returned vide return memo dated 19.05.2014 with the remarks ‘Funds Insufficient’. A legal notice was then sent by the complainant on 24.05.2014 calling upon the accused to make the payments but in vain.

3. The learned Court below on the basis of the evidence and another material led, acquitted the accused by holding that he borrowed a sum of ₹5 lakh, which was paid by cheque and ₹1,80,000/- had been allegedly given in cash, thus, the accused had borrowed Rs.6,80,000/- in total, whereas the cheque in question was for an amount of ₹7,15,000/- i.e. much more than the total amount borrowed by the accused. Hence, the complaint had miserably failed to prove that there had been any agreement between the parties qua the payment of interest on the loaned amount. The Court below also held that the complainant had proved acknowledgement Exhibit C6, which was signed by one Kuldeep Singh and not by the accused, therefore, it could not be said that a valid notice had been served upon the accused.

4. Learned counsel appearing for the complainant has reiterated the allegations levelled in the complaint in question by asserting that the accused had borrowed ₹5 lakh through a cheque to get his land redeemed and thereafter again borrowed a sum of ₹1,80,000/- for the purchase of a tractor. Hence, he was liable to pay ₹7,15,000/-

which was inclusive of interest. It was further submitted that the accused had not disputed his signatures on the cheque in question and had also failed to lead any cogent evidence in order to rebut the presumption under Section 139 of the Act. It was argued by learned counsel that the trial Court, while dismissing the complaint, failed to appreciate that it was not the case of the accused that a blank signed cheque had been handed over to the complainant nor was it even suggested to the complainant during his cross-examination that a blank cheque had been issued to him.

5. I have heard learned counsel for the parties and perused the relevant material placed on record.

6. Admittedly, as per the complainant, the accused borrowed a sum of ₹6,80,000/- in total, however, the cheque issued in discharge of this liability was in the sum of ₹7,15,000/-. No documentary evidence much less any acknowledgement or any agreement was placed on record by the complainant to establish that any interest payment had been agreed upon between the parties. Rather there was material inconsistency in the version put forth by the complainant as in the complaint he had alleged that a loan of ₹1,80,000/- had been extended to the accused on 13.05.2014, however, while stepping into the witness box as CW-1, he deposed to the contrary qua some entry in the *bahi* dated 12.05.2014 dealing with the payment of ₹1,80,000/-. The complainant also admitted his signatures on the backside of the cheque dated 30.11.2023 issued by the accused in favour of self, which clearly indicates that the amount was received by the complainant himself.

7. Still further, the complainant proved Exhibit C6 signed by one Kuldeep Singh, however, it was admittedly not signed by the accused. Hence, it cannot be presumed that a valid notice stood served upon the accused by the complainant. Moreover, it cannot be digested that the complainant would have extended a friendly loan of a huge sum of money without executing any document in the said regard. No doubt, it was the case of the complainant that the accused had been dealing with him in his capacity as a commission agent, however, no document to this effect was also placed much less proved by the complainant.

8. As a sequel to the above, this Court concurs with the observations made by the Court below that the complainant had failed to prove that there existed a legally recoverable debt payable by the accused to him. This Court, therefore, does not find any illegality much less infirmity in the impugned judgment.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

July 6th, 2023 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No