220 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-A-410-2019 (O&M)
Decided on : 21.02.2023

Jaimal Singh ...... Applicant

Versus

Davinder Kaur ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Anil Chawla, Advocate
for the applicant.

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Manjari Nehru Kaul, J.(Oral)

CRM-4398-2019

Application is allowed as prayed for and the delay of 09 days in filing the appeal is condoned.

Main case

The instant application has been filed under Section 378(4) r/w Section 482 Cr.PC for grant of leave to appeal against the judgment dated 20.11.2018 passed by JMIC, Amritsar whereby respondent-accused was acquitted of the charges framed against her under Section 138 of Negotiable Instrument Act (hereinafter referred to as 'the Act').

As per allegations levelled in the complaint in question, husband of the respondent-accused was well acquainted with the complainant and was on visiting terms with him. The respondent-accused requested the complainant to advance her a friendly loan of Rs.6 lakhs in May, 2014 as she was in dire need of money to meet her domestic needs. In view of the close relations, the complainant advanced a friendly loan of Rs.6 lakhs for a period of seven months. When the complainant asked the respondent-accused to repay the friendly loan, she issued one cheque bearing No.140023 dated 17.12.2014 drawn on Central Bank of India, Branch Sultanwind Road, Amritsar in favour of the complainant, in order to discharge her legal debt and liability. When the cheque was presented before the Bank, it was dishonoured with the remarks "funds insufficient" vide memo dated 19.12.2014. The complainant thereafter served a legal notice upon the respondent on 06.01.2015, however, despite the service of legal notice, the respondent failed to make the payment to the complainant. Resultantly, the complainant was left with no other remedy but to file the complaint in question under Section 138 of the Act.

The Court below, on the basis of the material and other evidence on record, acquitted the accused by holding that she had been successful in rebutting the presumption arising in favour of the complainant under Section 139 of the Act and the complainant on the other hand, had failed to prove his case in the absence of any cogent evidence led by him.

Learned counsel for the applicant-complainant has vehemently argued that while acquitting the respondent-accused, the trial Court failed to appreciate that the signature on the cheque had not been disputed by the respondent and therefore, the presumption under Section 139 of the Act, that the cheque was issued by the respondent-accused in discharge of her legal debt, would arise in the favour of the applicant.

Heard learned counsel for the applicant and perused the relevant material available on record.

The applicant-complainant during his cross-examination admitted that he had entered into an agreement with the respondent qua the sale of shops, which was executed on 23.04.2014 and had paid Rs.3,50,000/- to the respondent-accused as earnest money. Not only this, complainant further admitted that the property qua which the agreement to sell had been executed between the parties was for an amount of Rs.33,00,000/- and the original agreement to sell was in his possession.

The defence raised by the respondent-accused before the trial Court was that the cheque in question was a blank cheque, which had been issued as security with respect to one shop i.e. Shop No.5 forming part of property, which is a matter in dispute in a civil litigation pending between the parties.

In the circumstances, when the defence of the respondent-accused is read with the admitted case of the complainant during his cross-examination, it flows that the respondent-accused was successful in rebutting the presumption under Section 139 of the Act arising in favour of the complainant. When the respondent had successfully rebutted the presumption during the cross-examination of the complainant, the burden shifted upon the complainant to prove his case. Once complainant had admitted that he had entered into an agreement with the respondent-accused and also paid earnest money in the sum of Rs.3,50,000/- to her, it raises eyebrows and creates a doubt as to whether the accused could have been in dire need of money as alleged in the complaint. Moreover, the complainant, who is an educated man, admittedly did not execute any document like receipt, pronote etc. while extending a loan of Rs.6 lakhs.

A perusal of the impugned judgment dated 20.11.2018 does not reflect any illegality much less perversity, which would warrant the interference of this Court. The complainant did not place on record any document from which it could be proved that the cheque in question had been issued by the accused in the discharge of her legally enforceable debt or liability.

As a sequel to the above,this Court does not find any ground to grant leave to appeal. Accordingly, the present application stands dismissed.

21.02.2023 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No