

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-720-2022 (O&M)**Date of Decision: 04.01.2023**

Gurmail Singh

... Applicant

VS.

Wakeel Ahmad

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Suvir Sidhu, Advocate for the applicant

Sandeep Moudgil, J.

This application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 10.01.2022 passed by Sub Divisional Judicial Magistrate, Ellenabad (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, on the ground that the respondent had never issued the cheque in question (Ex.P4) for an amount of Rs.2,14,000/- in discharge of his alleged liability.

In nutshell, the allegations are that the applicant, was having close friendly relations with the respondent and was doing business with the brother of the respondent, namely, Sher Khan. The respondent approached the applicant and demanded an amount of Rs. 2,14,000/- for his domestic use and assured the applicant to return the same. When the applicant demanded the above-said amount back, the respondent issued a cheque No. 860794 dated 31.10.2016 of Rs.2,14,000/- drawn on State Bank of India, branch at Hanumangarh, allegedly, in the presence of one Swaran Singh. However, the cheque, on presentation, was returned dishonoured on account of "Funds

Insufficient” on 30.01.2017. Ultimately, a complaint under Section 138 of the NI Act was filed by the applicant before the trial court which has been dismissed vide the impugned judgment.

An application has also been filed by the applicant under Section 391 CrPC seeking permission to lead additional evidence *qua* the compromise dated 30.10.2016, on the ground that the applicant was unable to bring the said compromise on record during trial, as in the process of shifting of his clinic, the said compromise deed dated 30.10.2016 was misplaced.

Learned counsel for the applicant contended that the trial court has wrongly ignored the factum of compromise dated 30.10.2016, wherein it is clearly written that the respondent has a liability of Rs.2,14,000/- towards the applicant, and in discharge of the said liability, the cheque, in question, was issued by the respondent. It is further averred that the trial court has failed to take into consideration the fact that the presumption under Section 139 of the NI Act has not been rebutted by the respondent. Moreover, if there was any over-draft, the bank would have raised objection, whereas the only ground to return the Cheque by the Bank was “funds insufficient”. The further contention of the applicant is that the trial court did not consider the fact that in the FIR No.182 dated 11.04.2017 registered at the behest of the respondent, a cancellation report has already been submitted by the investigating agency stating that the matter is of civil nature, which, however, was not found to be satisfactory and cognizance was taken against the applicant under Sections 420/467/468/471 IPC by the CJM, Hanumangarh.

It was the plea of the respondent before the trial court that he had borrowed Rs.14,000/- from the applicant and for repayment of this amount,

he had issued cheque in question, in favour of the applicant by filling the amount of Rs.14,000/-. But applicant, with dishonest intention, made alteration and wrote numeral '2' so as to make it '2,14,000'. He even made alteration in the column where amount was written in words and he added Rs."Do Lakh" in it. The respondent even lodged an FIR (Ex.D1) against the applicant for this wrongful act.

Having heard ld.counsel for the applicant and 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.

The respondent had examined a handwriting and finger print expert as DW1, who in his report Ex. DW1/B had opined that the disputed digit '2' at Mark Q1 and disputed words 'Do Lakh' at Mark Q2 in the cheque No.860794 has been added 'fraudulently later on by different writer with different pen and ink to make the amount in digits and words from 14,000/- to 2,14,000'. The trial court rightly invoked Section 73 of the Indian Evidence Act to conclude that there are material alterations in the cheque (Ex.P4).

Further, the *bona fide* of the respondent can well be gauged by the very fact that he filed a complaint before Police Station, Hanumangarh Junction, on which, FIR No. 182 dated 11.04.2017 (Ex. D1) was registered against the applicant. But during investigation, the investigating agency declared the matter of civil nature vide report (Ex. D2). But the CJM, Hanumangarh found the enquiry report regarding dispute of civil nature to be not satisfactory and as such, cognizance was taken against the applicant under Sections 420, 467, 468 and 471 IPC vide order dated 01.10.2019 (Ex. D5).

In so far as the assertion of settlement arrived before panchayat i.e. Mark P1 is concerned, the same is not proved as per law by examining one of the attesting witnesses of the settlement. The amount of Rs.2,14,000/- had not been written in words. Even the original settlement had not been produced on record by the applicant. The trial court rightly observed that the same could not be read in support of the applicant's case and thus, the complaint was rightly dismissed.

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 as well as the application under Section 391 CrPC for leading additional evidence in shape of compromise, which otherwise, has not been proved before the trial court, is dismissed.

04.01.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No