HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-A-1880-MA-2017 (O&M)
Date of Decision: 24.03.2023
****

Darshan Kalra ... Applicant

VS.

Amit Oberoi ... Respondent

****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Deepinder Brar, Advocate for the applicant

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Sandeep Moudgil, J.

CRM-27588-2017

For the reasons mentioned in the application, the same is allowed and the delay of 144 days in filing the appeal is condoned.

CRM stands disposed of.

Main case

This application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 18.01.2017 passed by JMIC, Gurgaon (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the applicant under Section 138/142 of the Negotiable Instruments Act (in short 'the NI Act').

Learned counsel for applicant argued that the respondent had taken friendly loan of Rs. 5,00,000/- on 20.08.2014 for a period of six months, and, in order to discharge, the liability of loan, respondent had issued cheque bearing no. 000078 dated 15.02.2015 of Rs. 5,00,000/- drawn on kotak Mahindra Bank, JMD Regent Square, Mehrauli Gurgaon Road, Gurgaon Ex. C1 and when it was presented same got dishonoured vide return memos Ex. C2 & Ex. C3 with remarks "Funds Insufficient". Thereafter, despite being served with legal notice dated 16.04.2015 Ex. C4, respondent did not make the payment of cheque amount within mandatory period of 15 days. Thereafter, has failed to maintain his commitment.

Learned counsel further contended that the cheque Ex.C1 has been established on record, the legal preposition which falls is that Sections 138 & 139 of NI Act and Section 114 of Indian Evidence Act enjoin upon the court to raise a presumption of the liability of the drawer of the cheque for the amount for which the cheques are drawn. Reliance has been placed on ***State of Madras vs. A.Vaidyantha AIR 1958 SC 61*** to contend that it is obligatory on the court to raise the presumption in every case where the factual basis for the raising of the presumption has been established.

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 trial court observed that during cross-examination, applicant has been very inconsistent in telling as to how much amount he had advanced to the respondent . No security document was taken from the respondent at the time of advancing the loan. There are no particulars given in the complaint, nor any document has been placed on record by the applicant to prove the loan transaction and as such the trial court rightly held that applicant has proved himself to be unreliable and this has made way for the respondent to prove the non-existence of consideration, or atleast that it was improbable or doubtful. The complaint does not even indicate the date.

It is further the observation of the trial court a perusal of the complaint, affidavit of evidence and cross-examination of applicant shows that the applicant is earning from the business and maintains account books but he has nowhere shown that he has actually given the alleged amount to the respondent for earning profit at later stage. Even he did not place any ITR for the relevant period which could show alleged monitory transaction. As per Section 269 SS of Income Tax Act, if a loan of amount exceeding Rs. 20,000/- is advanced, it has to be by way of writing reflected in the books of account, but nothing of that sort has been done in the present case. It creates a doubt regarding the truthfulness stand by the applicant that he has advanced a loan of alleged amount to the respondent .

Moreover, the presumption of law, which is to be drawn in favour of the drawee of the cheque namely the applicant, that the cheque has been issued to him for the valid discharge of his debt, dislodged by a plausible explanation furnished by the respondent , wherein, he has stated that applicant is hiding the true factual position and is misleading the court as is clear from his complaint as well as affidavit of evidence. Therefore, as has been held in ***"Kulvinder Singh Vs. Kafeel Ahmed 2014(1) RCR (Crl.) 547"***, that failure on the part of applicant in not reflecting the amount of loan advanced, in his income tax return and plausible explanation adduced on the part of the respondent to rebut the presumption raised against him, presumption U/s 139 NI Act raised against the respondent stands rebutted, which is also situation in the present case.

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 dismissed.

24.03.2023
V.Vishal

(Sandeep Moudgil)
Judge

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