

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

237

CRM-A-676-MA-2018 (O&M)

Date of Decision: 10.10.2023

Kuldeep Kumar Walia

...Applicant

Vs.

Bhupinder Sooden

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. S.K. Chaudhary, Advocate, for the applicant.

N.S.SHEKHAWAT, J. (Oral)

CRM-10448-2018

The applicant/appellant has moved the present application to condone the delay of 39 days in filing the application for grant of special leave to appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 39 days in filing the application for grant of special leave to appeal is ordered to be condoned.

CRM-A-676-MA-2018

1. The present application seeking special leave to appeal has been filed against the judgment dated passed 22.11.2017, passed by the Judicial Magistrate 1st Class, Pathankot, whereby, the respondent was ordered to be acquitted of the notice of accusation

under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**').

2. The applicant/complainant had filed the present application seeking special leave to appeal against the impugned judgment dated 22.11.2017, passed by the Judicial Magistrate 1st Class, Pathankot, by stating that the applicant and the respondent were having cordial relationship and the respondent had demanded a sum of Rs. 1 lac from the applicant for his personal needs. The applicant lent a sum of Rs. 92,600/- as friendly loan for the personal needs of the respondent, without any interest. The respondent assured the applicant that he would return the same within a period of 6/7 months. Ultimately, the respondent, in order to discharge his legally enforceable liability, issued a cheque bearing No. 1268131 dated 12.04.2014 for a sum of Rs.92,600/- drawn on the Hindu Co-Op. Bank Ltd., Model Town, Pathankot, in favour of the applicant and handed over the cheque to him. A sum of Rs. 74,00/- was also handed over in cash and the respondent had assured the applicant that the cheque would be honoured on presentation. Ultimately, the applicant presented the cheque with his banker, i.e., Oriental Bank of Commerce, Pathankot, for encashment, however, the said cheque was dishonoured on 17.04.2014 with the reasons "Funds Insufficient". Immediately, on receipt on the memo regarding the dishonor, the applicant got a legal notice dated 01.05.2014 issued

through his counsel on the respondent and asked him to make the payment within a period of 15 days of receipt of the notice by him. However, despite notice, no reply was sent by the respondent. After recording the preliminary evidence, the respondent was ordered to be summoned and on his appearance, notice of accusation was served on him.

3. The complainant examined himself as CW1 and proved on record the original cheque dated 12.04.2014 as Ex.C1, memo Ex.C2, legal notice Ex.C3 and the postal receipts as Ex.C4 and the evidence was closed. The statement of the respondent under Section 313 Cr.P.C. was recorded and he pleaded his false implication. He stated that he had taken a loan of Rs. 20,000/- from the applicant with the interest @ 3% per month for 10 months on 12.01.2011. The total amount worked out was Rs. 26,000/-. The installment for returning the amount in 10 installments was Rs. 2600/- per month alongwith interest. He stated that he had issued 10 cheques also to the respondent for the above said installments. However, he had never issued a cheque for an amount of Rs. 92,600/-. Further, material alterations were made in the cheque from different ink and the cheque Ex.C1 was interpolated and altered and the date as well as amount were changed.

4. Learned counsel for the applicant submitted that the trial Court had completely overlooked the testimony of the prosecution

witnesses and the material on record. Learned counsel contended that it was wrongly held that there was material alteration in the cheque. Further, the trial Court itself held that the digit “9” was not prefixed to the amount of Rs. 2600/-. However, the first part of the statement of the applicant was wrongly disbelieved. Learned counsel further contended that there is a presumption under Section 139 of the Act in favour of the present applicant and the same has been overlooked by the trial Court.

5. I have heard learned counsel for the applicant and gone through the record carefully.

6. The trial Court has rightly recorded in the impugned order that by making an alteration, the year has been changed from 2011 to 2014. The trial Court had rightly held that from a bare perusal of the cheque Ex.C1, it was amply clear that date 12.04.2011 was altered by changing “1” to “4” in the year of the cheque. Even, the respondent had examined DW2 Kranti K. Sharma, who clearly gave finding that the year of issuance of cheque was wrongly altered from 2011 to 2014. Even during the course of trial, the applicant could not produce any evidence to show that such material alteration was not made in the cheque. Consequently, the date of cheque was altered from “12.04.2011” to “12.04.2014” and due to said addition, it was rightly held to be an invalid cheque. Even otherwise, as per Section 87 of the Act, any material alteration of negotiable instrument renders

the same void as against any one who is a party thereto at the time of making such an alteration. Apart from that, the statement of account of the accused was exhibited as DW1/C. The cheque bearing No. 1268127 was issued in the year 2011 and the cheque bearing No. 1268139 was issued in the year 2012. Thus, it is highly unbelievable that the present cheque in question bearing No. 1268131 would be issued by the accused on 12.04.2014. This fact alone proves that the date of cheque was altered from 12.04.2011 to 12.04.2014 and the cheque was rendered void due to the said material alteration. Even otherwise, I have gone through the impugned judgment carefully and found no illegality, material irregularity or perversity in the impugned judgment and the same is ordered to be upheld.

7. As a consequence, the present application seeking special leave to appeal is ordered to be dismissed.

8. All pending applications, if any, are disposed off, accordingly.

10.10.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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