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

CRM-A-783-MA-2018
Decided on : 02.03.2023

Raj Kumar Sharma ...... Applicant

Versus

Mukesh Panchal ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Manoj Kaushik, Advocate
for the applicant.

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<u>Manjari Nehru Kaul, J.(Oral)</u>

The instant application has been filed under Section 378(4) Cr.PC for grant of leave to appeal against the judgment of acquittal dated 05.03.2018 passed by learned JMIC, Faridabad vide which the criminal complaint filed by the applicant under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act') against respondent-accused was dismissed.

As per the allegations levelled in the complaint, the respondent-accused was extended a friendly loan by the complainant in the sum of Rs.25 lakhs in the month of June, 2015 on an assurance given that the said loan amount would be returned to him within a period of two months. After passage of sometime, when the complainant asked the accused to return the amount of Rs.25 lakhs, two cheques i.e. cheque No.072368 dated 12.08.2015 amounting to Rs.3 lakhs and cheque No.072369 dated 10.08.2015 amounting to Rs.22 lakhs drawn on Axis Bank, Sector 37, Faridabad were issued by the accused in discharge of his legal debt. On presentation, the said cheques were dishonoured vide memo dated 12.08.2015 and returned unpaid with the remarks “insufficient funds”. The complainant contacted the accused and intimated him about the cheques having been dishonoured, however, the accused requested the complainant to present both the cheques again in the month of September, 2015. As per the assurance given by the accused, the complainant presented the said cheques in September, 2015, which yet again were dishonoured vide memo dated 17.09.2015 with the same remarks i.e. “insufficient funds”. Soon thereafter, legal notice dated 15.10.2015 was sent to the accused, which was duly received by him, however, the accused neither replied to the same nor made any payment to the complainant. Left with no other option, after the expiry of 15 days time after the dispatch and receipt of the legal notice, the complainant filed the complaint in question on 27.11.2015 under Section 138 of the Act.

Learned counsel appearing for the applicant *inter alia* contends that the trial court gravely erred while passing the impugned order by not appreciating that the cheques in question bore the signatures of the accused and had been issued by him. Learned counsel submits that just a bald statement made by the accused that the blank signed cheques, which were given as security cheques had been misused by the complainant would not be sufficient to escape presumption arising under Section 139 of the Act. Learned counsel has further submitted that the Court below gravely erred in holding that the complainant did not have the financial capacity to advance such a huge loan.

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

A perusal of the impugned order reveals that the complainant during his cross-examination deposed that he had not filed his Income Tax Returns for the years 2015-16, 2016-17 and 2017-18. In the circumstances, this Court has no hesitation in concurring with the findings recorded by the Court below that the complainant did not have the financial capacity to advance such a huge amount of Rs.25 lakhs to the respondent-accused. Still further, it was not disputed by the complainant, rather he admitted, that he had obtained a loan of Rs.8 lakhs from the accused, which fact finds due corroboration from a plaint filed by the complainant against the accused and four other persons in the Civil Court, Faridabad as Ex.PX. In the circumstances, it does not appeal to prudence and it is very strange that on the one hand as per the case of the complainant himself, he had raised a loan of Rs.8 lakhs from the accused and for which he got executed a General Power of Attorney of his plot on 11.03.2015 and on the other hand, how could he have advanced a loan of Rs.25 lakhs to the accused just three months later, in the month of June, 2015. In the circumstances, it does raise eyebrows and a big question mark as to whether the complainant, who himself had taken a loan of Rs.8 lakhs from the accused, would have been in a position to even advance a friendly loan in the sum of Rs.25 lakhs to the accused. The factum of the complainant not making even an oblique reference to the loan taken from the accused in March, 2015 while instituting the complaint in question, further creates a big question mark qua the authenticity of the allegations levelled by him in the complaint in question. All these facts have yet again to be appreciated in the light of no Income Tax Returns having been filed by the complainant from the years 2015 to 2018. Still further, it is also a matter of record that the complainant did not produce any document much less any receipt in support of the loan allegedly advanced by him to the accused.

As a sequel to the above, prayer for grant of leave to appeal made by this applicant is declined. Accordingly, the present application stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

02.03.2023
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No