

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

**CRM-A-726-MA-2014
Date of Decision : 04.05.2023**

Malkesh Kumar Chawla

..... Applicant

Versus

Ramesh Ahuja

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Ms. Pratula Sethi, Advocate
for the applicant.

Mr. Rajiv Sharma, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

1. The applicant seeks leave of this Court to file appeal against the judgment dated 26.02.2014, passed by the Judicial Magistrate Ist Class, Faridabad vide which the respondent-accused was acquitted in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act').

2. The facts, in brief, are that the applicant filed a complaint under Section 138 of the N.I.Act. It was alleged that respondent-accused had taken a friendly loan of ₹3,10,000/- from the applicant in March, 2012 for his personal use as he was in need of money. It was promised to be repaid within a period of six months. On repeated requests made by the applicant for repaying the amount, the respondent-accused made part payment of the said

loan and issued three cheques No.678411, 678412 and 678413 dated 04.12.2012 & 10.12.2012, for an amount of ₹1,00,000/-, ₹50,000/- & ₹50,000/- respectively, all drawn on Punjab National Bank, Railway Road, Old Faridabad. It was assured that the cheques would be honoured on presentation to the bank. However, contrary to what had been promised, the cheques were dishonoured. A legal notice was issued calling upon the respondent-accused to pay the amount but the amount was not paid. Under the circumstances, the complaint was filed.

3. After preliminary evidence, the summoning order was passed. The respondent-accused appeared. Notice of accusation under Section 138 of the N.I.Act was served. Evidence was led in which the applicant appeared as CW1 and also tendered documents Ex.C-1 to Ex.C-9 out of which Ex.C-1 to Ex.C-3 were the cheques, Ex.C-4 to Ex.C-6 were the return memos and Ex.C-7 to Ex.C-9 were the legal notice, post receipt and acknowledgment. In defence, two witnesses were examined.

4. After considering the matter, the trial Court acquitted the accused leading to the filing of the present application for grant of leave of this Court to file appeal.

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

6. Learned counsel for the applicant has submitted that the trial Court gravely erred in acquitting the accused despite cogent evidence having been led. It has been submitted that the trial Court gravely erred in coming to the conclusion that once the applicant had himself taken a loan, he could not have given a loan to the respondent-accused. Learned counsel has submitted

that there is a presumption under Section 139 of the N.I.Act which had to be rebutted by the respondent-accused. Learned counsel has also submitted that the presumption was not rebutted and, therefore, the respondent-accused could not have been acquitted.

7. On the other hand, learned counsel representing the non-applicant/respondent has submitted that there is no illegality or infirmity in the judgment of the trial Court.

8. I have considered the submissions made by learned counsel for the parties.

9. While appearing in the witness box, the applicant himself admitted that he had raised a personal loan of ₹4,10,000/- from Canara bank in February, 2010. This clearly shows that the applicant was not in a sound financial position. The person who himself was not in sound financial position, would not extend loans to other people. The trial Court essentially took note of this fact and concluded that the presumption stood rebutted. In the case of **Basalingappa vs. Mudibasappa 2019 (2) R.C.R. (Criminal) 863**, it has categorically been held by the Hon'ble Apex Court that the financial condition of a person who alleges to have given a loan is an important factor and the same has to be considered in such matters.

10. Nothing has been shown to controvert this factual position which was admitted by the applicant himself while appearing as a witness before the trial Court. Under the circumstances, this Court is not inclined to interfere in the impugned judgment passed by the trial Court. Even otherwise, it is settled law that acquittals should not be lightly interfered with unless and until some perversity is shown in the judgment under challenge. Reference in

this regard can be made to the judgments of the Hon'ble Supreme Court in *Sadhu Saran Singh Vs. State of U.P. and others 2016 (2) RCR (Criminal) 319, State of Maharashtra Vs. Fazal Rehman Abdul, 2014 (7) SCC (Criminal) 01, State of Rajasthan Vs. Madan alias Madaniya 2019 Crl.L.R. (S.C.) 09 and Rabindra Kumar Pal alias Dara Singh Vs. Republic of India 2011(2) SCC 490.*

In view of the facts and circumstances of the case, I do not find any merit in the present application for seeking leave of this Court to file appeal and the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

04.05.2023
mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No