IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-9142-2020
in/and
CRM-A-411-2020
Date of Decision: 22.05.2023

M/S CHHABRA CLOTH HOUSE

…Applicant

Versus

MAHINDER PAL SINGH MONTY

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Arvind Kashyap, Advocate
for the applicant.

HARSH BUNGER, J.

CRM-9142-2020

This is an application seeking condonation of delay of 30 days in filing the accompanying application for grant of leave to file appeal.

For the reasons mentioned in the application, the same is allowed and delay of 30 days in filing the accompanying application for grant of leave to file appeal is condoned.

Criminal Misc. Application stands disposed of accordingly.

CRM-A-411-2020

The applicant/complainanthas filed this application under Section 378(4) of the Code of Criminal Procedure, for grant of leave to fileappeal against impugned judgment dated 28.11.2019 passed by learned Chief Judicial Magistrate, District Fatehgarh Sahib, whereby, the criminal complaint filed by him under Section 138 of the Negotiable Instruments Act (for short `N.I. Act') has been dismissed and the respondent/accused has been acquitted of the charges framed against him.

2. Briefly, the applicant/complainant filed a complaint under Section 138 of the N.I. Act by stating that the complainant is carrying on its business in the name and style of M/s Chhabra Cloth House and is an income tax assesse. As per the complainant, the respondent-accused was on visiting terms and was having friendly relations with the complainant and on 10.02.2013, respondent-accused had purchased clothes from the shop of the complainant worth Rs.90,000/- for which Invoice/Cash Memo was given to him by the complainant and the respondent-accused had promised to pay the said amount within a period of one month. It was alleged that after about one month i.e. on 14.03.2013, when the applicant-complainant demanded the aforesaid amount from the respondent-accused, then in order to discharge his legal liability, the respondent-accused issued a Cheque No.267027 dated 14.03.2013 for an amount of Rs.90,000/-, drawn on `HDFC Bank Limited', with the assurance that the said cheque would be honoured. However, when the afore-said cheque was presented by the complainant to his bank (Allahabad Bank, Branch Bassi Pathana), the same was sent to the `HDFC Bank', Bassi Pathana, for encashment, then the same was returned unpaid on 16.05.2013 with the remarks "Account dormant" and "Insufficient funds". Thereafter, notice of demand was issued by the applicant-complainant on 30.05.2013, calling upon the respondent-accused to make the payment. Upon failure to make the payment within the prescribed period, the complaint under Section 138 of the N.I. Act was filed.

3. After preliminary evidence, the respondent-accused was summoned to face trial under Section 138 of the N.I. Act vide order dated 08.08.2013. Initially, the respondent-accused was declared as a proclaimed person; however, subsequently, he appeared and joined the proceedings,

whereupon, notice of accusation under Section 138 of the N.I. Act was served upon him, to which, he pleaded not guilty and claimed trial.

4. In evidence, the proprietor of the complainant-firm namely Krishan Lal, examined himself as CW-1 and thereafter, closed the evidence.

5. After conclusion of complainant evidence, the statement of the respondent-accused was recorded under Section 313 of the Code of Criminal Procedure and all the incriminating material was put to him and the respondent-accused pleaded false implication and stated that he had borrowed Rs.65,000/- from the applicant-complainant in November-2010 and as the complainant had asked him to deposit the said amount in the account of the complainant in the `HDFC Bank' as per his convenience; accordingly, respondent-accused deposited Rs.15,000/- in the account of the complainant on 16.12.2010, Rs.25,000/- on 04.02.2011, Rs.15,000/- on 04.04.2011 and Rs.10,000/- on 05.07.2013. It was the stand of the respondent-accused that at the time of borrowing of the said amount from the complainant, the complainant had obtained one blank cheque from the respondent-accused, which he had promised to return as and when the respondent-accused would deposit the amount in the account of the complainant. It was further pleaded by the respondent-accused that on 05.07.2013, after depositing the balance amount of Rs.10,000/- in the account of the complainant, he demanded the disputed cheque from the complainant; however, the complainant told that the said cheque had been lost and as and when the same would be traced, he would return the same to the respondent-accused. It is the stand of the respondent-accused that he never received the notice dated 30.05.2013 as the address of the respondent-accused was wrongly mentioned in the said notice and he stated

that his name is Maninder Singh and neither he purchased any cloth from the complainant on credit nor the complainant had issued any bill regarding the alleged purchase.

6. In defence, the respondent-accused has examined Harkamal Singh, Deputy Manager of `HDFC Bank' as DW-1 and then closed the evidence.

7. The learned Chief Judicial Magistrate, Fatehgarh Sahib, after appreciating the evidence, dismissed the complaint filed by the applicant-complainant and acquitted the respondent-accused vide judgment dated 28.11.2019.

8. Learned counsel for the applicant submitted that the learned trial Court has erred in law and facts in acquitting the respondent/accused as the offence under Section 138 of the N.I. Act was clearly made out. It is stated that there is every likelihood that the impugned judgment may be set aside on the basis of the grounds set out in the application for grant of leave to file appeal. Accordingly, it has been prayed that the application seeking leave to file appeal may be allowed and leave may be granted to the applicant to file appeal.

9. I have heard learned counsel for the applicant-complainant and gone through the paper book as well as impugned judgment dated 28.11.2019 passed by learned Chief Judicial Magistrate, Fatehgarh Sahib.

10. Here, it would be apposite to refer to few judicial pronouncements regarding the scope and parameters, in which, interference can be made in a judgment of acquittal.

11. In ***'Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479'***, Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in

a judgment of acquittal, by observing as under:

> *"An order of acquittal is to be interfered with only when thereare "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."*

12. In ***'Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748'***, Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

13. Coming to the case in hand, the learned trial Court, after appreciating the evidence on record, observed as under:-

> *"18. Now in the present case, the version of the accused is that he had borrowed a loan of Rs.65,000/- from the complainant in November 2010 and he has returned the said amount to the complainant by depositing the said amount in installments in the account of complainant firm i.e. Rs.15,000 on 16.12.10, Rs.25,000 on 04.02.11, Rs.15,000/- on 04.04.11 and Rs.10,000/- on 05.07.13. The said fact that the said amount has been deposited by the accused in the account of complainant firm also stands proved on record from the evidence of DW1 Sh. Harkamal Singh, Deputy Manager of HDFC Bank who identified the receipts Ex. D1 to Ex. D4 having been issued by their bank regarding the deposit of amount and he further produced the statement of account bearing no.08002020000067 of the complainant firm and the*

said payments which in total amounts to Rs.65,000/- are also reflected in the certified copy of the statement of account of complainant firm which is Ex. D5 on record as proved by the said witness DW1 namely Harkamal Singh. There is no cogent explanation available or furnished by the complainant as to why the said amounts were deposited by the accused in account of complainant firm and that too much before the filing of the present complaint by the complainant firm against the accused. Although Ld. Counsel for complainant during the course of arguments stated that the said amounts were deposited by the accused in the account of complainant firm as accused was having previous dealings also with complainant firm on account of which he owed the said amounts, but the said version which has been put up for the first time on behalf of complainant by his Ld. Counsel during the course of arguments is in total contrast and contradiction to the version of CW1 Krishan Lal who is the proprietor of the complainant firm, in his cross examination. The said witness who is the only witness examined by the complainant in this case clearly stated in his cross examination that he does not remember as to whether before or after the transaction in question on 10.02.13, he had sold any cloth to the accused and that before 10.02.13, there was no amount due against the accused. He also stated that he does not know as to whether before 10.02.13 there was any dealing or balance outstanding in between him and the accused. He also stated that he does not know as to in which connection the accused deposited the various amounts in the account of complainant firm vide receipts Ex. D1 to Ex. D4. Thus, the proprietor of the complainant firm himself is not aware and is not able to clarify as to why the accused had deposited the said amounts in the account of the complainant firm and that too much *prior to the alleged transaction in question dated 10.02.13 qua which the present complaint has been filed by the complainant firm. The said witness CW1 Krishan Lal has rather also admitted in his cross examination that no balance was outstanding against the accused before 10.02.13 which is the alleged date of transaction when the accused purchased clothes from the complainant firm. In addition to this, it is the version of the complainant firm that the said sale of the clothes from the shop of complainant to accused for an amount of Rs.90,000/- was made against invoice/cash memo which was given to the accused. However, any such invoice/cash memo has not been produced or proved in this case by the complainant firm nor the carbon copy of the same has been placed on record and that too despite the fact that CW1 KrishanLal has admitted that the carbon copy of the bill remains with the firm. The complainant firm has also not produced any account book of its firm for evidencing that the transaction in question of sale of cloth to accused on credit ever took place as alleged by the complainant. Moreover, while the complainant has alleged in his complaint that transaction was for Rs.90,000/-, but CW1 Krishan Lal stated in his cross examination that the accused purchased material for Rs.97-98,000/- but he cannot tell whether the bill was of Rs.97-98,0000/-. He further stated that out of the said amount due against the accused, he had paid Rs.7-8,000/- and that amount was entered in the account books of complainant firm. However, there is no disclosure of the said version of the complainant firm in the complaint that actually material worth Rs.97-98,000/- was sold to the accused out of which he made payment of Rs.7-8,000/- in cash and the cheque in question was issued for the remaining amount. Even the account books of the complainant firm evidencing the said* *payment of Rs.7-8,000/- by the accused as alleged by CW1 KrishanLal in his cross examination have not seen the light of the day in the present complaint, at any stage. Accordingly, this Court is of the considered opinion that accused has succeeded in putting up a probable defence and has been able to make dent in the case of complainant on account of which the presumption under section 139 of Negotiable Instruments Act clearly stands rebutted in the present case. The evidence of complainant on record is full of material weaknesses and contradictions and the case of complainant stands completely shadowed by the receipts in question as well as the statement of account of complainant firm Ex. D1 to Ex. D5, proved on record by accused through the evidence of DW1 Sh. Harkamal Singh. Thus, in the absence of said presumption under section 139 of Negotiable Instruments Act in favour of accused or the said presumption having been successfully rebutted by the accused and further in the absence of production of cash memo/invoice concerned as well as its account books by the complainant firm, this court is of the considered opinion that it is not proved that accused issued the cheque in question in favour of the complainant in discharge of his legal liability or debt.*

19. Accordingly, in view of the above said discussion, this court is of the opinion that the complainant has failed in establishing his version as well as ingredients of the offence under section 138 of Negotiable Instruments Act against the accused Mahinder Pal Singh in this case and thus by extending a benefit of doubt to the accused, he is acquitted in the present case…"

14. The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings

can be held as perverse or against the evidence and law. Applicant-complainant had miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

15. When the findings given by the trial Court are considered in the light of the legal position indicated above; no interference is called for; especially when the applicant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 28.11.2019 passed by learned Chief Judicial Magistrate, Fatehgarh Sahib.

16. No other argument was raised.

17. In view of the above discussion, the instant application is bereft of any merit and the same is accordingly dismissed.

18. All pending application/s, if any, shall stand closed.

May 22nd, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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