

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-42102-2022 in/and**CRM-A-700-2022****Date of Decision: 04.01.2023**

Prem Singh

... Applicant

VS.

Raghubir Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. DS Rawat, Advocate for the applicant

Sandeep Moudgil, J.**CRM-42102-2022**

For the reasons mentioned in the application, the same is allowed and the delay of 8 days in filing the appeal is hereby 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 24.02.2022 passed by JMIC, Samalkha (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act'), on the ground that the applicant has failed to prove his case by way of cogent and reliable evidence.

The applicant, in December, 2016, is alleged to have lent an amount of Rs.9,62,750/- to the respondent. The respondent issued cheque bearing No.330101 dated 04.08.2017 for the said amount, in discharge of his legal liability. The said cheque was dishonoured for want of sufficient funds

on 23.08.2017. The applicant requested the respondent for return of this money, but to no avail. The applicant served a legal notice dated 19.09.2017 and ultimately, a complaint under Section 138 of the NI Act was filed. The said complaint has been dismissed vide the impugned judgment. Hence, the present appeal has been filed along with an application seeking leave to appeal against the judgment of acquittal.

The averments made by the counsel for the applicant are far from comprehension. The contents of the pleadings in the petition are so ill-drafted and casual that one cannot make out as to what argument is being raised by the counsel. Rest apart, counsel for the applicant contended that the applicant has duly proved his case vide affidavit Ex.CW1/A as well as documentary evidence. The documentary evidence Ex. D1 to Ex. D7 tendered by the respondent is not sufficient to brush aside the consistent case of applicant and the trial court has committed grave factual error in rejecting the rightful claim of the applicant.

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 assessed the financial capacity of the applicant who was working as a Rajmistri (mason) during 2012 to 2017. He is alleged to have lent the amount of Rs.9,62,750/- in August, 2016, in the presence of his family members. The deposition made by the applicant that he tendered currency notes of de-monetization of Rs.2,000/- in August, 2016 to respondent stands falsified since de-monetization was announced by the Government of India with effect from 08.08.2016. During cross-examination,

the applicant had deposed that he had taken Rs.2 lacs from his daughter-Sarla and Rs.2 lacs from Satpal, a resident of village Tajpur but he neither examined his daughter Sarla nor the aforesaid Satpal and as such the trial court rightly observed that the applicant has failed to prove sufficient and reliable source of income. The filing of ITR has also not been proved on record by the applicant. Otherwise also, nothing has been brought on record to show that the applicant was working in the Pearl Financial Company in order to show his source of income.

In the light of this discussion and the evidence, the trial court rightly held that the applicant had no financial capacity to lend huge amount of Rs.9,62,750/- as it is of prime consideration for this Court, in the light of the case law as mandated by the Hon'ble Supreme Court in **Basalingappa versus Mudibasappa 2019 (2) R.C.R.(Criminal) 863 SC.**

In view of the above, this Court is of the considered view that there is no infirmity, perversity and illegality for any interference with the judgment passed by the trial court and as such the present application under Section 378(4) of CrPC, seeking leave to appeal, is dismissed.

04.01.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No