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

CRM-A-1748-2019 (O&M)
Decided on : 15.02.2023

Satwant Kaur

..... Applicant

Versus

P.P.H.C.Balwinder Singh No.805/5 IRB

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vijay Lath, Advocate
for the applicant.

Manjari Nehru Kaul, J.(Oral)

CRM-23438-2019

For the reasons mentioned in the application, delay of 31 days
in filing the appeal is condoned.

Main case

The instant application has been filed under Section 378(4) r/w
Section 482 Cr.PC for grant of leave to appeal against the judgment dated
31.01.2019 passed by JMIC, Jalandhar.

Learned counsel for the applicant-complainant submits that the
impugned judgment vide which respondent was acquitted of the offence
punishable under Section 138 of Negotiable Instrument Act (hereinafter
referred to as 'the Act') deserves to be set aside as the same was passed by
the trial Court without appreciating the evidence adduced before it in the
right perspective. Learned counsel submits that the respondent-accused had
enticed the complainant to enter into an agreement with him for a sum of

Rs.18 lakhs for sending her son to the USA. Resultantly, complainant gave Rs.2,00,000/- to the respondent-accused as advance amount and rest of the money was to be paid to the respondent after the complainant's son reached USA. Since the accused failed to send the complainant's son to the USA, the complainant demanded back the advanced amount given to the accused. The respondent-accused in order to discharge his liability issued a cheque bearing No.096682 dated 28.08.2012 for a sum of Rs.2 lakhs drawn on HDFC Bank Ltd., Amritsar in favour of the complainant. However, when the cheque was presented by the complainant in the bank, it was dishonoured on account of insufficient funds. Since the respondent-accused failed to make good the payment of the cheque amount despite being put on legal notice, the complainant was left with no other remedy but to institute a complaint under Section 138 of the Act.

Learned counsel vehemently argued that the trial Court erred in holding that the complainant had failed to lead any evidence qua any agreement between the parties to send the son of the complainant to the USA. It was argued that since the accused had not disputed his signatures on the cheque (Ex.P-1), in the circumstances, he could not be absolved of the offence which he had committed under Section 138 of the Act. Thus, in the facts and circumstances and in view of the evidence adduced, presumption under Section 118 as well as 139 of the Act would lie in favour of the holder of the Instrument i.e. cheque in question. It was also submitted that the onus lay upon the respondent-accused to show as to how the cheque in question landed with the complainant in the first place because it was not even the respondent's case that his cheque had been

misplaced. Learned counsel further argued that the trial Court had further erred in holding that since the accused was a police official, he was not competent to run a travel agency business and, in case, any money as alleged had been indeed given to the accused by the complainant, it was evidently an illegal transaction and therefore, would *void ab initio*. Learned counsel still further argued that this observation of the trial Court was erroneous as it was not the case of the complainant that the agreement between her and the respondent was to send her son to the USA at any cost even, if illegal. Learned counsel submitted that the respondent was acting in an advisory position on behalf of the travel agency when he assured the complainant that her son would be sent to USA and therefore, the transaction could not be said to be void.

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

This Court does not find any merit in the submissions made by learned counsel for the applicant. It has not been disputed by the applicant-complainant that there was no agreement entered into between the parties qua the refund of the amount of Rs.2 lakhs, which had been paid as advance to the respondent-accused by the complainant for sending her son abroad. It has also not been disputed rather it is a matter of record that the respondent-accused was a serving police official at the time when the alleged agreement was entered into, for sending the son of the complainant to the USA, and was not carrying on the business of a travel agency. Even if, the submissions made by learned counsel is accepted that the respondent-accused was acting in an advisory position, it is highly improbable that the

complainant would have paid a hefty amount to the accused just for consultation, more so when the accused at the relevant time was admittedly serving a police official and no evidence was brought on record qua his travel agency business much less of he being associated with the travel agency as an advisor. In the circumstances, it cannot be said that the alleged transaction was for the discharge of a legally enforceable debt.

Learned counsel, no doubt, laid a great deal of stress qua there being a presumption in favour of complainant under Section 139 of the Act, however, the said presumption is rebuttable in nature. The accused in order to rebut the said presumption, has to prove his defence only on the touchstone of preponderance of probabilities to demolish complainant's case as being unbelievable or improbable by either leading evidence in support thereof or by pointing out to inherent inconsistencies in the case set up by the complainant. In the present case, the respondent was able to raise a probable defence to show that the cheque had not been issued for the discharge of a legally enforceable debt or liability, therefore, the presumption under Section 139 of the Act in favour of the complainant stood duly rebutted.

As a sequel to the above, this Court does not find any ground to grant leave to appeal. Accordingly, the present application stands dismissed.

15.02.2023
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No