(228) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1323-2019 (O&M)

Date of Decision:22.03.2023

M/s Mega Flex Printing Office ... Applicant/Appellant

Vs.

Satish Kumar Gupta ... Respondent

CORAM : HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. Shiv Kumar, Advocate for the applicant-appellant.

SANDEEP MOUDGIL, J. (Oral)

CRM-20648-2019

This application has been filed under Section 5 of the Indian Limitation Act for condonation of delay of 35 days in filing the present appeal.

For the reasons stated in the application which is duly supported by an affidavit, delay of 35 days in filing the present appeal is condoned.

Application is, accordingly, allowed.

Main case

This is an application under Section 378 (4) of Cr.P.C seeking grant of leave to appeal by assailing order dated 26.03.2019 passed by the learned Judicial Magistrate Ist Class, Faridabad, vide which complaint under Section 138 of Negotiable Instruments Act has been dismissed acquitting the respondent-accused.

Briefly stated the facts of the case are that complainant is a proprietorship firm being run by its proprietor Mrs. Babita wife of Rajender Singh with the assertion that the accused-respondent was in good terms with her and in the year 2016, the respondent-accused purchased a new residential house/accommodation on that account, a request was made to the complainant by the respondent-accused for an advancement of Rs.5,00,000/- for a period of one month and accordingly said friendly loan only for one month on 18.10.206 has been availed by the respondent-accused. Since the said friendly loan despite various reminders and requests was not refunded within the stipulated period of one month just admitting his legal liabilities, it has been argued that the respondent-accused issued three cheques i.e. Cheque Bearing No.038112 dated 18.11.2016 for Rs.1,50,000/-, cheque Bearing No.038113 dated 20.11.2016 for Rs.2,00,000/- and cheque bearing No.038114 dated 21.11.2016 for Rs.1,50,000/- drawn on "Central Bank of India, Sector-28-29, Fairdabad in favour of the appellant-complainant.

Subsequently the facts which lead to filing of the complaint are that when the cheques were presented for encashment through its banker, the same were returned unpaid vide different returns memos dated 18.02.2017 with the remarks "Funds Insufficient". Despite issuing a legal notice dated 03.03.2017 by the complainant which was posted on 04.03.2017, neither the payment was made nor any reply was given to the said legal notice within the stipulated further period of 30 days as provided under the Negotiable Instruments Act. On account of no reply, the complaint under Section 138 of the Negotiable Instruments Act came to be filed at the behest of the present appellant-complaint wherein the accused-respondent stand acquitted vide impugned judgment.

It is that order passed by the trial Court which has been assailed before this Court by the complainant-appellant who has argued that the trial Court committed grave illegality while acquitting the respondent-accused without considering the fact that the respondent-accused never took the defence for not issuing the cheques in question in favour of the appellant-complainant. It has been further asserted that even the accused-respondent further never took any plea that he do not know the appellant-accused and he has taken the plea that he never issued the cheques in question in favour of the complaint but his cheques bearing

No.038101 to 038120 and one PAN card, four passport size photographs were lost which is a vague and frivolous defence put-forth and after thought by the respondent-accused. Learned counsel for the appellant further submitted that the trial Court has also drawn a wrong inference in the light of the fact that the appellant-complainant failed to produce any ITR, therefore, he did not prove the burden shifted upon him to prove his capacity of advancing loan to the tune of Rs.5,00,000/-.

Heard learned counsel for the appellant.

Having gone through the assertion made in the complaint as well as appeal and the submissions made before this Court, the impugned judgment has been examined. It is an admitted fact that three cheques i.e. C-1, C-3 and C-5 dated 18.11.2016, 20.11.2016 and 21.11.2016 were dishonoured and returned with the remarks “Funds Insufficient” and a legal notice dated 03.03.2017 (C-7) has been served in that regard to which the respondent-accused did not respond and accordingly, complaint was filed.

The brief reading of Negotiable Instruments Act simply surmises into a presumption that every negotiable instrument Act was made or drawn for consideration that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. The rules of presumptions under Section 118 and 139 of the Negotiable Act help to shift the burden on the accused until contrary is proved by the respondent-accused to the effect that the cheque was not issued in discharge of its liability. Such presumption can be rebutted by the complainant accused by bringing on record facts and circumstances enabling the Court to believe whether the consideration in debt exists or not.

In the instant case, it has been recorded that the complainant failed to produce any document, affidavit or any writing to establish that Rs.5,00,000/- were advanced by him to the respondent-accused as the case set-up by the complainant is that it was a friendly loan for the purpose of purchasing a house except for issuance of cheques which were presented and resulted into dishonour of the same.

Learned trial Court has returned a finding to the effect that the complainant-appellant has failed to produce any cogent evidence and convincing evidence to prove the legal liability of the accused in respect of the cheques. Inasmuch as, the complainant who is 12th pass and is proprietor of the firm and files ITR since 2008 did not produce any document in respect of advancing of Rs.5,00,000/-. A perusal of the cross-examination of the accused-respondent also nothing substantially can be extracted to support the version of the complainant-appellant. Even DW-2 Shubhan Jain appeared and produced statement of account pertaining to account No.008301526520 of Satish Kumar from 01.11.2016 and DW-3 Sh Bijender Singh, ARC, Sub-registrar, Faridabad appeared and produced the record of Ex.DW-3/A in respect of registered sale deed dated 03.10.2016 and proved the same.

This Court having examined collectively the aforesaid evidence produced on record can easily make out a conclusion that the appellant-complainant has failed from all four corners to prove that any such money transaction has been took place to make a legal liability of debt which is pre requisite for such complaint under Section 138 of the Negotiable Instruments Act.

On the other hand, respondent-accused has proved on record the complaint/FIR got registered by him for the loss of his cheques, PAN Card and other certain documents to which the complainant-appellant failed to rebut the same.

In the light of the aforesaid facts and discussion, the appellant has failed to prove his case beyond reasonable doubts, therefore, the trial Court vide its impugned judgment has rightly acquitted the respondent-accused and returned a finding that the complainant-appellant has failed to prove the issuance of cheques by the respondent-accused in question in his favour to discharge any legal debt or liability.

This Court while applying the law laid down in ***Main Pal and another*** versus ***State of Haryana and others***; 2004 (2) RCR (Criminal) 466, do not find any illegality or infirmity in the impugned judgment passed by the trial Court.

Accordingly, the appeal is dismissed.

(SANDEEP MOUDGIL)
JUDGE

22.03.2023
rajeev

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*