

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

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2023:PHHC:118083

CRM-A-1886-2019 (O&M)

Date of decision: September 5th, 2023

Dalbir

.....Applicant

Versus

Dalbir

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Varuna Singh, Advocate
for the applicant.

MANJARI NEHRU KAUL, J.

CRM-23718-2019

Prayer in this application is for condonation of delay of 127 days in filing the application for leave to appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the applicant, the same is allowed.

Delay of 127 days in filing the application is condoned.

CRM-A-1886-2019

The applicant-complainant (hereinafter referred to as 'complainant') is impugning the judgment dated 10.01.2019 passed by learned JMIC, Sonapat, whereby respondent-accused (hereinafter referred to as 'accused') was acquitted of the charges framed him in complaint bearing CIS No.621/2015 under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

2. As per the allegations levelled in the complaint, the accused borrowed a sum of ₹30 lakh from the complainant in the month of March of 2015 for his business. After repeatedly requesting, the accused to repay the aforementioned loan, he issued a cheque baring No.298559 dated 19.05.2015 for a sum of ₹30 lakh in

favour of the complainant. When the cheque was presented by the complainant in the bank, it was returned, vide memo dated 20.05.2015, with remarks "Exceed arrangement". The complainant intimated the accused qua the dishonour of the cheque issued by him. Thereafter, the accused issued two cheques bearing No.298262 and No.298263 dated 02.06.2015 to the complainant. Upon presentation, both these two cheques were also returned, vide memo dated 03.06.2015, with the remarks "Funds insufficient". Resultantly, the complainant sent a legal notice calling upon the accused to make the payment, but in vain.

3. The Court below, on the basis of the material and other evidence led, acquitted the accused by holding that the legal notice was not served to him as per the provisions of Section 138 of the Act. It was further held that the complainant had miserably failed to prove the case against the accused as no cogent evidence was led by him to prove the existence of a legally enforceable debt, whereas the accused on the other hand, had been able to successfully rebut the presumption under Section 139 of the Act.

4. Learned counsel for the applicant-complainant has reiterated the allegations levelled in the complaint in question by asserting that he had loaned a sum of ₹30 lakh to the accused. He has further submitted that the Court below had fallen into error by not appreciating that once the accused had not disputed his signatures on the cheque in question, a presumption under Sections 118 and 139 of the Act would arise in favour of the cheque holder; mere non-production of income tax returns by the complainant could not thus be a sufficient ground to rebut the said statutory presumption.

Learned counsel has further submitted that the Court below had also

failed to appreciate that the complainant had sold some plots of land to arrange for money, which in turn had been loaned to the accused. Learned counsel has thus, submitted that the trial Court had ignored settled law while drawing an adverse inference qua the complainant on the ground that there was no written agreement executed between the parties with respect to the transaction in question.

5. I have heard learned counsel for the applicant and perused the relevant material on record.

6. Admittedly, the legal notice as mandated under Section 138 of the Act was not sent at the correct address of the accused, even though the complainant was well aware about the same. It does not appeal to prudence and is rather very strange that a huge loan in the sum of ₹30 lakh was allegedly given to the accused by the complainant by way of cash and there was no documentary evidence much less any written agreement produced by the complainant in support thereof. Still further, the complainant did not examine even a single witness in whose presence the said amount was advanced to the accused. Furthermore, the complainant also failed to lead any evidence qua the source from where he managed the sum of ₹30 lakh, which in turn had been loaned by him to the accused. Though, it was claimed by the complainant that he had obtained the money from the sale of his property, however, it is a matter of record that no sale deeds much less any transfer receipts were produced during trial.

7. As a sequel to the above, this Court has no hesitation in concurring with the findings recorded by the learned trial Court that in the absence of any written loan agreement and the failure of the complainant to establish the source of the money, which he had

advanced to the accused, the latter had been successful in presenting a plausible defence by rebutting the presumptions under Section 118 (b) and 139 of the Act.

8. The application, therefore, stands dismissed.

September 5th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No