HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-42105-2022 in/and
CRM-A-707-2022
Date of Decision: 04.01.2023

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Amit ... Applicant

VS.

Shashi Pal ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Rahul Jaswal, Advocate for the applicant

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Sandeep Moudgil, J.

CRM-42105-2022

For the reasons mentioned in the application, the same is allowed and the delay of 42 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 23.05.2022 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.

On 04.04.2014, respondent borrowed Rs.26,00,000/- and had entered into an agreement dated 04.04.2014 to sell the land to pay the earnest money. Later on, applicant came to know that respondent had defrauded him in the name of earnest money. Accordingly, a Panchayat was convened between the parties on 15.12.2014. As such the respondent issued three cheques in the name of Vijay son of Rajpal (because applicant had taken loan of Rs.5 lac from aforesaid Vijay) for onward payment to the respondent, out of which two cheques bearing No. 599161 and 599162 were dishonoured by the bank due to “account closed”. Legal notice dated 12.05.2015 was issued and ultimately, the applicant filed a complaint under Section 138 of NI Act which has been dismissed vide the impugned judgment. Hence, the present appeal.

Learned counsel for the applicant has submitted that the trial Court has erred in law while not considering the bank statement Ex.C8 (Annexure A1) which categorically stated that there was sufficient amount in the account of the applicant which also shows that there was sufficient source of income. It is further averred that all the ingredients of Sections 118, 138 & 139 of the NI Act are made out on the face of it supported by cogent evidence and the trial Court was required to presume that the cheques in question were drawn for consideration and the holder of the cheques received the same in discharge of his debt liability. It is also contended on his behalf that the trial court also did not consider the testimony of applicant CW1 and has actually misread and misconstrued the facts of the case.

Having heard learned 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.

It is evident on record that during cross-examination, the applicant deposed that he is running a mobile phone repairing shop for the last 3-4 years. He has no other source of income. Since the income from this shop is hardly enough to meet his domestic expenses which is his only source of income, the trial court rightly observed that the applicant does not have enough source to lend huge amount of Rs.26 lakhs to respondent. The filing of income tax return has also not been proved on record by the applicant by leading cogent and reliable evidence which is further substantiated from his own bank. The applicant was bound to explain his financial capacity when it is questioned by the respondent as it was incumbent upon appellant alone to have explained his financial capacity as has been held by the Hon'ble Supreme Court in **Basalingappa versus Mudibasappa 2019 (2) R.C.R.(Criminal) 863 SC**.

Further, the trial court has rightly observed that the appellant himself has admitted during cross-examination that agreement to sell dated 04.04.2014 was not executed for the land of respondent and in fact the alleged land was owned by one Shri Satbir; the respondent was simply a broker in the said deal; the attesting witnesses namely, Vijay and Ashok, of the agreement to sell Ex. D3, are his own men. Meaning thereby that Vijay and Ashok are hand in glove with the appellant to falsely implicate the respondent in the present case without actual delivery of alleged money.

In view of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court and as such the present application under Section 378(4) CrPC is declined and accordingly, having no merit, the appeal also stands dismissed.

04.01.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*