IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM Nos.37628-29 of 2023 in/and
CRM-A No.1209 of 2023 (O&M)
Date of Decision:07.11.2023

M/s Moti Ram Mangat Rai through its proprietor ... Applicant/Appellant

Versus

Manjeet Singh ... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kamal Jindal, Advocate
for the applicant-appellant.

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HARPREET SINGH BRAR, J. (ORAL)

CRM No.37629 of 2023

The present application has been preferred under Rule 3-A(i) of the Chapter 6 Part B Volume V of the High Court Rules and Orders for grant of leave to file the present case without Number of Roll of Advocate.

For the reasons stated in the application, the same is allowed and leave is granted to the counsel to present the case without Number of Roll of Advocate.

CRM No.37628 of 2023

Prayer in the application is for condonation of delay of 14 days in filing the present application.

For the reasons stated in the application, the same is allowed and the delay of 14 days in filing the present application is condoned.

CRM-A No.1209 of 2023

1. The present application has been preferred by the applicant-appellant under Section 378 (4) of the Criminal Procedure Code, 1973 against the judgment dated 07.06.2023 passed by the learned Judicial Magistrate 1st Class, Dabwali, Sirsa

whereby the respondent-accused has been acquitted in the complaint case registered under Section 138 of the Negotiable Instruments Act, 1881 (in short NI Act).

2. In brief, the facts are that the respondent-accused being acquainted to the applicant-appellant/complainant had promised to sell his agricultural produce at the shop of the applicant-applicant/complainant, on the basis of which, respondent-accused borrowed an amount of Rs.4,40,000/- on interest @ 2% per month, by way of four cheques, details of which are as under:-

Cheque Number	Date	Amount
0000592	18.05.2017	Rs.1,05,000/-
0000626	12.07.2017	Rs.2,00,000/-
000010	14.11.2017	Rs.64,500/-
000211	15.07.2009	70,500/-

3. On 09.11.2020, a total amount of Rs.7,56,000/- was due against the respondent-accused and in order to discharge his liability, he had issued cheque bearing No.000007 dated 10.11.2020 of an amount of Rs.7,55,000/- drawn on HDFC Bank, Branch Mandi Dabwali. However, when the complainant presented the said cheque, the same was dishonoured with remarks ‘insufficient funds’ vide memo dated 10.12.2020. Thereafter, the complainant got issued a statutory notice dated 15.12.2020 as provided under Section 138 of the NI Act, however, the respondent-accused did not make the payment. Having left with no other option, the complainant made complaint under Section 138 of the NI Act.

4. The complainant had appeared as CW-1 and tendered his affidavit as Ex.CW-1/A to corroborate the contents of the complaint along with documents Ex.C1 to C27.

5. On being *prima facie* case made out against the respondent-accused, he was served notice of accusation under Section 138 of the NI Act vide order dated 07.03.2022 to which pleaded not guilty and claimed trial.

6. The learned trial Court after appreciation of documentary as well as oral evidence adduced by both the parties came to the conclusion that allegations for commission of offence under Section 138 of the NI Act are not proved beyond reasonable doubt against the respondent-accused, thus, he was acquitted by giving benefit of doubt.

7. Learned counsel for the applicant-appellant argues that the finding rendered by the learned trial Court that the applicant-appellant is not competent to advance agricultural loan without holding a valid licence/registration certificate under the provisions of the Punjab Money Lender's Licence Act, 1938 (hereinafter referred to as the Act of 1938) is completely erroneous. As per Section 2 (11) of the Act of 1938, 'commission agent' falls under the category of 'Trader' and not 'Money Lender', therefore, the complainant was fully competent to engage in the business of sale and purchase of agricultural produce and advance agricultural loan. It is further argued that the respondent-accused had admitted that he took loan from the complainant and in lieu of settlement thereof, issued cheque in question, which was dishonoured. In order to avoid his liability, the respondent-accused made up a story that the complainant used to transfer money in his account and withdraw the same later on, without his knowledge. Had it been so, what prevented him to lodge a police complaint that the complainant misused his bank account or forcibly kept his signed blank cheques in his possession. It is also argued that provisions of Sections 118 and 139 of the NI Act draw a strong presumption in favour of the complainant, which the respondent-accused has miserably failed to rebut and therefore, he was liable to convicted.

8. Having heard the counsel appearing for the applicant-appellant and after perusing the record of the case with his able assistance, this Court finds no merit

in the arguments raised by the counsel appearing for the applicant-appellant. There is no dispute to the fact that presumption has to be drawn in favour of the holder of the negotiable instrument, however, the said presumption is rebuttable. Once the accused discharges his burden, the onus shifts upon the complainant to prove that the accused was under legal debt or liability. The respondent-accused had categorically denied that he had taken any money from the complainant as loan and the amounts deposited in the account of the respondent-accused were in lieu of sale price of his crops. These bank transactions were of different dates i.e. 18.05.2017, 12.07.2017, 14.11.2017 and 15.07.2019. Though the complainant relied upon entries Ex.C4 to Ex.C18 in the *bahi* but there is no writing regarding the fact that the complainant had extended the amount of Rs.4,40,000/- as loan to the respondent-accused. The complainant set up the case that the accounts were settled on 09.11.2020, pursuant to which the total amount due towards the respondent-accused was Rs.7,56,000/-, however, no documentary evidence was brought on record to corroborate that the account was settled on that date and the same was duly acknowledged by the respondent-accused, despite the fact that the complainant admitted in his cross-examination that the respondent-accused was present on that day. The complainant has also failed to prove the settled rate of interest and as to how and in what manner he calculated interest on the amount of Rs.4,40,000/- to make the outstanding amount as Rs.7,56,000/-. The complainant has miserably failed to prove that the respondent-accused had taken an amount of Rs.4,40,000/- as loan and he was under legal debt of Rs.7,55,000/- towards the complainant by way of cogent evidence.

9. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of

the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. The presumption of innocence further gets reinforced on the acquittal of the accused. (See ***H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023;*** **Kali Ram v. State of H.P., 1973 (2) SCC 808** and ***Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415)***.

10. In view of the facts and circumstances of the case, this Court finds that the learned counsel for the appellant has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined on the ground of delay as well as on merit. Resultantly, the main appeal is also dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 07, 2023
Pankaj*

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