

219 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-A-193-2019 (O&M)  
Decided on : 21.02.2023

Sukhwant Singh

..... Applicant

Versus

Balram Kumar @ Bam

..... Respondent

**CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Raj Karan Singh, Advocate for  
Mr. Abhinav Gupta, Advocate  
for the applicant.

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**Manjari Nehru Kaul, J.(Oral)**

**CRM-1206-2019**

Application is allowed as prayed for and the delay of 41 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 14.02.2018 passed by JMIC, Bathinda whereby the respondent-accused was acquitted of the charges framed against him under Section 138 of Negotiable Instrument Act (hereinafter referred to as 'the Act').

As per allegations levelled in the complaint in question, on 01.12.2013, respondent-accused took a loan of Rs.2,50,000/- in cash from the complainant for some domestic purpose in the presence of marginal witnesses Nirmal Singh and Lakhi Ram. The respondent-accused at the time of obtaining the loan executed a writing/receipt in the said regard in favour of the complainant. On 19.08.2015, respondent-accused issued cheque bearing

No.014256 dated 19.08.2015 for Rs.2,50,000/- to the complainant, however, when the said cheque was presented in the bank, it was dishonoured vide memo dated 20.08.2015 with the remarks “Funds Insufficient and Payment Stopped by Drawer”. After receipt of cheque and memo, the complainant served a legal notice dated 25.08.2015 calling upon the accused to make payment, but in vain. Resultantly, the complainant was left with no other remedy but to file the complaint in question under Section 138 of the Act.

The trial Court, on the basis of evidence and other material led, acquitted the accused by holding that the cheque was not issued by him in discharge of any legal debt or liability.

Learned counsel for the applicant-complainant has vehemently argued that the trial Court erred in holding that the appellant did not have the financial capacity to advance the loan in question by relying upon the testimony of DW-1 Niranjana Singh, Assistant Manager and DW-6 Rajinder Rana, Branch Accountant, who deposed to the fact that the complainant had taken a loan from the bank. Learned counsel has further argued that it was beyond comprehension that just because the complainant had taken a loan for a tractor, it would render him incapable of advancing a loan of Rs.2,50,000/- to the respondent-accused. It has been further argued that in fact the loan amount coupled with the income which the complainant was deriving from his farming and dairy business, left no manner of doubt that he had the financial capacity to advance the loan in question to the respondent-accused. It has lastly been argued that even the signatures on the cheque in question had not been disputed by the respondent-accused, which fact was erroneously ignored by the trial Court.

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 the learned counsel for the complainant. The complainant for reasons best known to him did not examine even a single witness, who was present when the loan in question was advanced to the respondent-accused. As also observed by the trial Court, even Ex.C5 the alleged writing executed qua advancing the loan did not even strangely bear the signatures of the complainant. The complainant during his cross-examination admitted that he did not have any friendly relations with the accused. The complainant further also admitted that he had never advanced any loan to anyone without interest. Hence, it does not appeal to prudence that the complainant, who himself had availed a loan from the bank, would lend money to the accused with whom he admittedly had no relations much less friendly, and that too without taking any interest thereon. No doubt, it was argued by the learned counsel that the complainant was financially capable to advance the loan, however, no cogent and convincing evidence was brought on record by the complainant during trial with respect to his income. Therefore, this Court does not find any illegality much less any error in the impugned judgment by the Court below.

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

21.02.2023

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**(MANJARI NEHRU KAUL)**  
**JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No