**2023:PHHC:039113**

216 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-A-1713-MA-2018 (O&M)
Decided on : 10.03.2023

Ashok ...... Applicant

Versus

Bijender ...... Respondent

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

Present : Mr. Jagjot Singh, Advocate
for the applicant.

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

**CRM-29165-2018**

Application is allowed as prayed for and the delay of 53 days in filing the application for leave to 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 of acquittal dated 26.03.2018 passed by learned JMIC, Gurugram vide which the criminal complaint filed by the applicant under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act') against respondent-accused was dismissed.

As per the allegations levelled in the complaint in question, the respondent obtained a friendly loan from the complainant in the sum of Rs.11.50 lakhs for personal necessity in November, 2014. Thereafter, to discharge his legal liability, the respondent issued cheque bearing

No.000012 dated 25.09.2015 in the sum of Rs.11.50 lakhs drawn on HDFC Bank Ltd., District Gurgaon in favour of the complainant. On presentation of the cheque on 05.10.2015 in the bank, it was returned unpaid vide memo dated 05.10.2015 with the remarks “insufficient funds”. Thereafter, when the aforesaid cheque was again presented for encashment in the bank, vide memo dated 30.10.2015 it was returned with the remarks “account closed”. The accused was intimated by the complainant and a legal notice dated 09.11.2015 was also sent to him through registered post. Since the respondent-acused refused to receive the legal notice and failed to make payment in discharge of his aforesaid legal liability, the complainant was left with no other remedy but to institute the complaint in question.

Learned counsel for the applicant has reiterated his averments made in the complaint in question as well as his submissions made before the Court below that the signatures on the cheque in question Ex.C1 had not been disputed by the respondent, hence, a presumption under Section 118 and 139 of the Act arose in favour of the complainant, more so, when the respondent had failed to rebut the same.

Heard learned counsel for the applicant and perused the relevant material available on record.

It has not been disputed by the respondent that the cheque in question Ex.C1 does bear his signatures, hence, the presumption under Section 118 and 139 of the Act does tilt in favour of the complainant. However, it is the specific plea of the respondent that he had never handed over the cheque in question to the complainant rather it had been handed over along with two other cheques to Shyam Bir and Vijay, brother of the complainant as consideration in respect of a crusher machine, which had been taken on lease by him. In support, the respondent besides examining himself, examined DW-1 Surender Singh, DW-2 Nand Kishore and DW-3 Shyambir, who deposed qua an agreement DW-1/A having been executed, wherein it was clearly mentioned that cheques bearing No.000011, 000012 and 000013 had been handed over to Shyambir and Vijay towards payment of the lease amount.

Admittedly, DW-3 Shyambir and Vijay, brother of the complainant, were partners in a Stone Crushing Company being run under the name and style of Devi Stone Crushing Company. The stand taken by the respondent finds due corroboration with the statement of Vijay, brother of the complainant, recorded under Section 202 Cr.PC wherein he stated that the respondent had given cheque of Rs.11.50 lakhs, equivalent to the cheque amount in question. It would be pertinent to notice that the statement of Vijay was recorded on 26.07.2015 whereas cheque in question was issued on 25.09.2015. The statement of Vijay as is thus evident, was recorded much prior to the issuance of the cheque in question. Moreover, as per the admitted case of the complainant, the loan in the sum of Rs.11.50 lakhs was advanced to the accused in cash, however, the complaint is completely silent about the date and time when the said loan was advanced. Still further, strangely since the complainant as per his own admission is not an Income Tax Payee, it does raise a big question mark as to how he could then have been in a position to advance such a huge amount of loan. No supporting evidence much less in the shape of any bank statement for the relevant period was produced in the Court below by the complainant.

This Court thus, does not find any error in the impugned judgment dated 26.03.2018 passed by the Court below.

As a sequel to the above, prayer for grant of leave to appeal made by the applicant is declined. The present application stands dismissed.

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

10.03.2023
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No