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IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-A-285-MA-2013
Date of Decision: 16.04.2024

JARNAIL SINGH

.....APPELLANT

VERSUS

PARAMDEEP SINGH .....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amit Sharma, Advocate for the appellant.

Mr. L.S. Sekhon, Advocate for the respondent.

SANDEEP MOUDGIL, J

CRM-29441-2013

1. Prayer in this application is under section 5 of Limitation Act for condonation of delay of 591 days in filing the appeal.

2. In view of the averments made in this application which is supported by an affidavit, the delay of 591 days in filing the present appeal is condoned.

3. Accordingly, the application is allowed.

CRM-A-285-MA-2013

1. The application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 28.07.2011 passed by Special Judicial Magistrate, Kurukshetra (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, (in short, 'the

NI Act'), on the ground that the appellant has miserably failed to prove beyond reasonable doubt that cheque in question was issued to him in discharge of legally enforceable debt.

2. Briefly putforth, the respondent-accused borrowed a sum of Rs. 3,00,000/- from the appellant and promised to return the same within two months and in case of failure to pay the same within a stipulated time, he would have to pay 24% interest per annum and after agreeing to the given condition, the above stated amount was paid in cash at Ladwa on 02.06.2005. Thereafter, the accused-respondent in order to discharge his legal debt and liability issued cheque bearing no. 774535 dated 10.08.2005 for Rs.3,00,000/- drawn on the State Bank of Patiala, Fatehgarh Sahib branch in the favour of the appellant but the same was presented before its banker Punjab National Bank, Ladwa, the same was dishonoured vide memo dated 20.08.2005 with the remarks "Account Closed''. Thereafter, the accused-respondent was got served legal notice dated 25.08.2005 but despite that, the accused-respondent failed to make the payment and complaint was filed against the accused-respondent under section 138 of NI Act which was dismissed vide impugned judgment. Hence, the present appeal.

3. Counsel for the appellant contends that the trial court has erred in acquitting the respondent-accused whereas it is a proven fact that the cheque in question bearing his signatures was issued by him. Further, the respondent-accused on different occasions have given contradictory statements which makes it abundantly clear that his version is doubtful.

4. He vehemently argues that the trial court has wrongly opined that cheque in question could not have been used in 2005 from the previously closed account in 2002-03 whereas in ***'NEPC Micon Ltd vs Magma Leasing***

Ltd 1999 AIR (SC) 1952' , the Apex Court has held that when the cheque is returned by a bank with an endorsement '*account closed'* , it would amount to returning the cheque unpaid because the amount of money standing to the credit of that account is insufficient to honour the cheque as envisaged in Section 138 of NI Act. Further, DW-3 could not prove that cheque in question is relating to the same bank account which was closed in 2002-03.

5. He strenuously argues that the cheque in question was given 4-5 days later to the date of loan and this fact has not been acknowledged by the trial court resulting into miscarriage of justice.

6. Heard learned counsel for the appellant at length and gone through the record meticulously.

7. It is evident from the record that the accused-respondent has at no instance admitted the fact of taking loan from the appellant and issuing the cheque in question in the name of appellant. Further, the appellant has failed to prove that in what capacity he was dealing with the respondent-accused wherein the appellant is of Ladwa and respondent-accused resides on Fatehgarh Sahib. In addition, as is evident from the perusal of the file that since beginning, respondent-accused has denied to have taken loan from the appellant and execution of cheque in his favour. Rather, to prove his case beyond reasonable doubt, the appellant should have compared the cheque in question from the expert but he did not opt to do so. Moreso, it is equally settled that accused/respondent can rebut such a presumption by raising a probable defence of "preponderance of probablilities" and such an inference can be drawn, not only from the material on record, but also by reference to the circumstances upon which the accused/respondent relies.

8. In my view, after meticulously going through the facts, a doubt is created in the cross examination of the appellant-complainant wherein he has admitted that in May, 2005 the respondent-accused had come to him and after 2-3 days, he advanced the loan of Rs. 3,00,000/- to him in June and the cheque in question was given after 4-5 days but the date of the cheque is dated in August 2005 and not June 2005 which is suffice for this court to infer that the appellant has failed to prove his case beyond reasonable doubt.

9. 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 dated 28.07.2011 and as such the present application under Section 378(4) CrPC is declined and accordingly, having no merit, the appeal also stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

16.04.2024
Poonam Negi

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