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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A No.430-MA of 2013 (O&M)
Date of Decision: 20.02.2024

The Sarla Urban Co-op. N.A.T. & C Society

.... Applicant/Appellant

Versus

Rajan Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sanjiv Gupta, Advocate for the applicant/appellant.

Mr. Harkirat Singh, Advocate for
Mr. Vikram Singh, Advocate for the respondent.

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MAHABIR SINGH SINDHU, J.

Present application has been filed under Section 378 (4) read with Section 482 Cr.P.C. seeking leave to appeal against the impugned judgment dated 10.05.2013, passed by learned Judicial Magistrate 1st Class, Hisar (for short 'JMIC'), vide which complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act'), filed by the applicant/appellant was dismissed.

(2) Allegations are that respondent borrowed some loan from the appellant-Society; but he did not repay the same. It is further alleged that respondent issued one cheque bearing No.0288282 dated 08.05.2009, amounting to Rs.1,29,965/- for repayment of the loan, but the same was dishonoured on 09.05.2009.

(3) This Court has gone through the impugned judgment of acquittal carefully and para. 15 of the same reads as under:-

> *"15. Hence, the arguments addressed by the learned counsel for the accused that his loan application form/ agreement signed by him at the time of advance of loan, at the first instance had been misused and forged to create evidence that he had borrowed further loans of alleged amount at various points of time, seems to be reliable. Moreover, since, the aforesaid entries of advance of loan (Mark-A) had not been counter-signed by the accused-drawer (Loanee) it led to an interference, that the entries of the alleged advance of loan were wrong and misleading. Further, the Agreement of Guarantee allegedly executed byt Sh. Phool Kumar son of Sh. Dhan Singh on 9.7.2007 (Ex.C-14) also did not find mentioned specific sum of loan borrowed by the accused-drawer (Loanee) on that date. It has further been analyzed, that all the receipts of payments of loan installments vide Ex.D3 to Ex. D22 were never been produced in evidence by the complainant-Society/Holder, thus, had concealed relevant and material facts from the court. Lastly, and most importantly, no statement of account of the accused/Drawer had also been placed on record to prove, that a sum of Rs.1,29,965/- was outstanding against him on the date of execution of the disputed cheque (Ex.C-2). Hence, complainant/Holder of the cheque failed to prove that the cheque in question had been drawn to discharge a legally enforceable debt/other liability."*

(4) Perusal of the above extract clearly reveals that applicant-appellant failed to prove that cheque in question was issued by respondent to discharge any legally enforceable debt. Even the entries regarding advancement of alleged loan were not counter-signed by the respondent. That apart, agreement (Ex.C-14) allegedly executed by one Phool Kumar also did not contain any specific loan amount advanced to the respondent.

Moreover, there is no evidence for advance of loan; nor any statement of account to that effect was brought on record by the applicant-appellant. Hence, in such a scenario, there is no option, except to agree with the findings recorded by learned JMIC in para 15 (*supra*) to the effect that applicant-appellant has failed to substantiate the point of legally enforceable debt against the respondent.

(5) *A fortiorari*, despite repeated asking, learned counsel for applicant-appellant is not able to show any material that findings recorded by learned JMIC are perverse; or that any material document has not been considered while passing the impugned judgment.

(6) As a result of the above, no ground is made out to grant leave to appeal against the impugned judgment of acquittal.

(7) Consequently, application for seeking leave to appeal is dismissed.

(8) Pending application(s), if any, shall also stand disposed off.

20th February, 2024 **(MAHABIR SINGH SINDHU)**
Gagan/SN **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*