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**IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**CRM-A-1201-MA-2016 (O&M)
Decided on: 07.05.2024

Baldev Singh

.... Applicant

versus

Ranjit Singh

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAULPresent: Mr. Abhishek Jaidev, Advocate for
Mr. A.S.Manaise, Advocate
for the applicant.

Manjari Nehru Kaul, J. (Oral)**CRM-19931-2016**

Application is allowed as prayed for and delay of 11 days in filing the present application is condoned.

Main case

Instant application has been filed by the applicant under Section 378(4) Cr.PC feeling aggrieved against the order dated 07.04.2016 passed by learned Judicial Magistrate Ist Class, Gurdaspur vide which the accused was acquitted of the charges under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act').

2. As per the allegations levelled by the applicant-complainant (hereinafter referred to as 'complainant') in his complaint, he had advanced a friendly loan of Rs.5 lacs to the respondent-accused for business purposes, which the accused failed to repay. Subsequently, the accused issued a cheque bearing No.028845 dated 20.04.2012 for

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Rs.5 lacs, which was dishonoured due to insufficient funds. Despite a statutory legal notice demanding payment, respondent failed to comply with the same.

3. The Court below acquitted the accused by holding that there were insufficient evidence to prove that the cheque in question had been issued to discharge legally enforceable debt.

4. Learned counsel for the complainant has reiterated that the money in question had been advanced as friendly loan, which the Court below failed to appreciate. He asserted that just because there was absence of specific details pertaining to the loan so advanced to the respondent-accused could not be a ground to discredit his case. Learned counsel further emphasised that since it was a friendly loan advanced by the petitioner, it was based on mutual trust and there were ample evidence supporting the case of the complainant. Additionally, he submitted that the trial Court had relied upon a FIR dated 09.05.2013 Ex.DA registered against two ladies and an affidavit dated 03.03.2012 Ex.D-1 allegedly executed by the complainant wherein it stood reflected that an amount of Rs.5 lacs had been deposited by the complainant in the account of these two ladies. Learned counsel submitted that this could not have been a ground to absolve the respondent-accused from his liability to repay the loan in question. Learned counsel submitted that once the complainant had fully disclosed the relevant facts in his complaint, the burden shifted upon



the respondent-accused under Section 139 of the Act to demolish the case of the complainant.

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

6. The complainant has failed to provide any documentary evidence in support of the advancement of loan, raising doubts about the credibility of the said transaction, especially given that a substantial amount of money was involved. The absence of specific dates regarding the loan advancement and issuance of cheque further weakens the case of the complainant. The concealment of facts by the complainant including his involvement in a case of fraud and also depositing money into unrelated party's accounts further undermines the credibility of the case brought-forth by the complainant against the respondent-accused.

7. This Court, therefore, concurs with the observations made by the trial Court that it is indeed very strange that a huge amount of Rs.5 lacs was allegedly given to the respondent-accused in cash as per the allegations levelled. Further, in order to draw presumption under Section 118 read with Section 139 of the Act, the burden was heavily upon the complainant to prove his case against the accused. The Court below rightly held that the complainant had miserably failed to prove the case for commission of offence under Section 138 of the Act against the respondent-accused.



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8. As a sequel to the above, this Court does not find any illegality much less perversity in the impugned order. Accordingly, the present application being devoid of any merit stands dismissed.

07.05.2024
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No