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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1412-MA-2018 (O&M)
DECIDED ON: 23.07.2024

AMIT SHARMA

.....APPELLANT

VERSUS

BALIHAR SINGH .....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nilesh Kant Goyal, Advocate for
Mr. A.S. Virk, Advocate for the applicant/appellant.

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SANDEEP MOUDGIL, J (ORAL)

Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 09.02.2018, passed by the Judicial Magistrate 1st Class, Kurukshetra, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under Section 138 of the Negotiable Instruments Act (for short ' the Act').

2. Factual Matrix of the case leading to the filing of present petition unfolds as that the respondent/accused had taken an amount of Rs.5,00,000/- from the appellant/complainant for purchasing plot/property and for discharging his legal liability the respondent issued a cheque no.008122 dated 20.7.2011 for Rs.5,00,000/- drawn at ICICI Bank, Karnal. But when the appellant presented the said cheque before his banker for encashment, the same was dishonoured due to insufficiency of funds vide

memo dated 16.01.2012. Thereafter, the appellant served a legal notice upon the respondent but all in vain, hence, the complaint was filed but the respondent was acquitted by the Trial Court vide judgment dated 09.02.2018 which suffers from grave illegality, perversity as such the same is liable to be set aside.

3. Learned counsel for the appellant has argued that despite being there admission by the respondent that the cheque in question bears his signatures, and the factum of giving the cheque, then the presumption under Section 139 of the Negotiable Instrument Act is applicable which has not been rebutted by the respondent. It is his further argument that when there is admission of factum of cheque, the accused cannot be absolved only on the ground that the complainant could not prove his financial status whereas in the instant case, the appellant has proved his financial capacity too, but the Trial Court has brushed aside the same.

4. I have heard learned counsel for the applicant/appellant and gone through the record.

5. From perusal of the judgment, it is apparent that it was incumbent upon the complainant to prove that he was having sufficient financial capacity at relevant time and once the financial capacity of the complainant is not proved on record, then the question of existence of any legally dischargeable debt does not arise. Moreoever, in the case in hand neither in the complaint nor during trial, the complainant was able to give particulars about when and how the huge amount of Rs. 5,00,000/- was given to the accused. However, the complainant/appellant failed to prove

the delivery of the cheque as the complainant had admitted in his cross-examination that he had presented the impugned cheque by filling name, amount and date therein whereas as per the deposition of the father of the complainant the accused has filled the body of the cheque and after signing the same, it was handed over to the accused, thus, such a contradictory stand is highly fatal to the version of the complainant. Further, this Court cannot close its eyes to the fact that the premature complaint is not maintainable as the complainant has alleged that he had issued the notice on 15.02.2012 and received the same unclaimed on 28.02.2012 and on the same very day, the complainant filed the complaint whereas as per settled provisions of law under Section 138 of NI Act, the statutory notice is to be issued for 15 days and the limitation to file the complaint commences after expiry of 15 days from the date of issuance of legal notice, meaning thereby, the limitation for filing the complaint started from 03.03.2012 which proves that it was a premature complaint and deserves to be dismissed.

6. This court finds no reason to disbelieve that the accused has proved that the complainant has no financial capacity to advance the amount in question, there was no existence of legal liability, the delivery of cheque is also doubtful and above all, the complaint was filed prematurely. Thus, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution.

7. Accordingly, the impugned judgment is upheld and leave to appeal stands declined.

8. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

23.07.2024
anuradha

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*