

231

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

CRM-A-1127-MA-2017 (O&M)

Date of decision : 18.03.2024

Tarun Gupta

...Applicant/Appellant

Versus

Vinod Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Lakshay Jindal, Advocate,
for Mr. Aman Bansal, Advocate,
for the applicant/appellant.

Mr. Raghav Sharma, Advocate,
for the respondent.

MAHABIR SINGH SINDHU, J.

CRM-17338-2017

Application for condonation of 66 days' delay in filing the
application for leave to appeal.

It transpires that notice of the application was issued to the
non-applicant/respondent on 13.04.2023.

Today, learned counsel for the non-applicant/respondent
has caused appearance and does not seriously oppose the prayer made.

In view of the above and for the reasons recorded in the
application, same is allowed as prayed for.

As a result thereof, delay of 66 days in filing the
application for leave to appeal is condoned.

Main case

Application under Section 378(4) Cr.P.C. for seeking leave to appeal against the judgment of acquittal dated 10.11.2016, passed by learned Judicial Magistrate First Class, Kurukshetra (for short, 'JMIC') in Criminal complaint No.250 of 2016 under Sections 138/142 of the Negotiable Instruments Act, 1881 (for short, 'the Act') titled as 'Tarun Gupta Vs. Vinod Kumar'.

2. Above complaint was filed under Section 138/142 of the Act and particulars of the cheque in question are as under:-

Cheque No.23922

Dated 31.3.2012

Amount Rs.1,00,000/-

Drawn on HDFC Bank Limited

Aforesaid cheque is alleged to have been returned by the Banker of the complainant along with memo. dated 10.04.2012. Also alleged that on asking of the respondent-accused, cheque was presented again, but this time also, met the same fate due to 'insufficient funds' vide memo dated 14.6.2012. Consequently, legal notice dated 18.6.2012 was served upon the appellant, but he failed to make the payment and that necessitated to file the complaint.

3. Contends that learned JMIC while passing the impugned judgment failed to consider the material available on record inasmuch as the signatures on the cheque were never disputed by the respondent-accused. Also contends that respondent-accused himself acknowledged his liability by way of an application dated 25.02.2014 regarding

willingness to deposit the cheque amount; thus, there was no occasion to dismiss the complaint.

4. *Per contra*, learned counsel for the respondent submitted that learned JMIC has considered the entire material available on record and passed the well-reasoned judgment of acquittal. Also submitted that applicant/appellant failed to prove the accusation levelled against the respondent and moreover, circumstances regarding the cheque in question were duly explained in his statement under Section 313 Cr.P.C. as well as through credible documentary evidence in defence i.e. Ex.D1 to Ex.D6.

5. Heard learned counsel for the parties and perused to paper-book as well as records.

6. Learned JMIC while analyzing cross-examination of the complainant in para No.10 of the impugned judgment, noticed certain admitted facts, *inter alia*, in the following manner:-

“The complainant was not having any source of income. He specifically deposed that he does not want to disclose the source of having Rs. One lac with him. The complainant has never earned any money from any business. He is having PAN card but never filed any income tax return and cannot disclose his PAN number;

The complainant's parents used to run a firm with name and style M/s Venus Packaging Solution, G.T.Road Umri. The firm manufactures card board. The complainant is having no concern in the said firm and is also not doing any work in the said firm;”

7. Further, in para 11 of the judgment, learned JMIC came to the conclusion that complainant is deposing falsely and for reference, the observations to that effect are recapitulated as under:-

11. *After reading the present testimony of the complainant with the certified copy of the depositions given in the criminal Complaint no.18217 of 2013, it is clear that the complainant is deposing falsely in all material respect. He himself admitted that he has no independent source of income. The complainant never disclosed the circumstances under which he reposed faith in the accused to give him a huge amount of Rs. One lac especially when the accused is residing in Abohar, District Fazilka (Pb.) i.e. 400 km far away from Kurukshetra. By virtue of judgment Ex.D6 passed in civil suit filed by M/s Venus Packaging Solution against the present accused, it is clear that the accused was having some business transaction with the firm i.e. M/s Venue Packaging Solution. In the said case, the complainant's father pleaded that an amount of Rs. 1,03,082/- was outstanding against the plaintiff which was to be paid to the firm i.e. M/s Venue Packaging Solution, but the case was dismissed by learned Civil Court. Therefore, the accused makes his defence probable and ably proves that he is having no relation with the complainant and had only issued the impugned cheque Ex.C1 to the firm M/s Venus Packaging Solution for security purposes which already lost the civil suit for recovery against the accused. There remains no question that the accused was having any lawful enforceable liability towards the said firm. On the other hand, the sole testimony of the complainant is not trustworthy at all and is suffered with material contradictions and improvements.*

8. Still further, while dealing with the application dated 25.02.2014, moved by respondent, specifically observed in para No.12 as under:-

12. *Now coming to the question as to whether the application dated 25.2.2014 moved by the accused can be taken as confession*

on his part. After carefully perusal of the said application, it is clear that the accused nowhere admitted his guilt and only pleaded his readiness to pay the amount of the cheque of Rs. One lac in the Court. Nowhere in the said application, the accused stated that he issued the cheque to the complainant and is admitting his guilt. The said application has ably been explained by the accused in his defence given in his statement recorded under section 313 Cr.P.C as well as during the cross-examination of the complainant. Merely, the accused is offering to pay some money to the complainant for the reason to avoid unnecessary harassment of attending the court in the proceeding of a criminal complaint instituted under section 138 of Negotiable Instrument Act cannot be taken as confession against him. It is settled proposition of law that the confession shall be made in clear terms by the accused and the same should have been suffered voluntarily, without any coercion or undue influence. The accused should have admitted his guilt in clear terms. Therefore, the application dated 25.2.2014 moved by the accused during the proceedings of the present complaint cannot be taken as confession.”

9. Today, during the course of hearing, on repeated asking of the Court, learned counsel for the applicant/appellant is not able to show that he was a partner or proprietor of the firm-M/s Venus Packaging Solution. He has also not been able to show as to whether any goods were supplied to the respondent; nor any material is available on record to indicate that source invoice was issued in this regard. Also discernible from perusal of documents Ex.D1 to Ex.D6 that there was no legal liability of the respondent regarding cheque in question. Thus, respondent has duly explained and discharged the

onus while explaining that cheque in question was only for security purposes and father of the complainant did not supply any goods at relevant point of time.

10. In view of the above, there is no hesitation to concur with the findings recorded by learned JMIC to the extent that testimony of the complainant is not trustworthy; rather suffer from material contradictions, hence rightly discarded.

11. Moreover, this is not the case that view taken by learned JMIC is not plausible view or that findings recorded are perverse or that learned JMIC failed to consider the material evidence available on record.

12. In view of the above discussion, this Court does not deem it appropriate to grant leave to appeal against the impugned judgment of acquittal.

13. Consequently, there is no option except to dismiss the present application.

14. Ordered accordingly.

15. As a result of the above, leave to appeal against the impugned judgment of acquittal dated 10.11.2016, passed by learned JMIC is hereby, declined.

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

18.03.2024
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No