253 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

CRM-A-1455-MA-2014 (O&M)
Date of Decision: 20.03.2024

Ajay Sharma .... Applicant/appellant

Versus

Subhash Chand ....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: None for the applicant-appellant.

MAHABIR SINGH SINDHU. J.

This is an application filed under Section 378(4) of Code of Criminal Procedure, 1973 for seeking leave to appeal against the judgment dated 14.07.2014, passed by Judicial Magistrate First Class, Gurgaon (for short "JMIC") whereby respondent was acquitted in complaint under Section 138 of Negotiable Instruments Act, 1881 titled as "***Ajay Sharma Versus Subhash Chand***".

2. While acquitting the respondent, learned JMIC in para 10 of the judgment, observed as under:-

> "*10. It is pertinent to mention here that it has been proved upon the case file through admission of complainant Ajay in his cross examination itself that the cheque in dispute was a security cheque given in advance to the complainant by the accused. Hence it has been a settled proposition of law as far as security cheque is the acknowledgement of liability on part of the drawer and the cheque holder may use the security cheque as an alternative mode discharging his/its liability. But the burden to prove the fact that at the time of using the security cheque there was a legally enforceable debt or liability exist is upon the complainant. Further the accused always has a right to produce evidence to rebut the factum of any existence of legal debt or liability at the relevant*

point of time. As far as the case in hand is concerned it has come upon the case file that earlier also the complainant filed two complaints against the accused in 2011 and therein also accused took the defence that the complainant has taken 12 blank security cheques from him and has been misusing those cheques. Moreover, an application was made to the Branch Manager of Indian Overseas bank dated 28.10.2011 Ex.D-5 as produced upon the case file also contains the cheque No. 202439 i.e. the cheque in dispute in the list of cheques, the payment of which was stopped by the accused stating therein that he has already made the due payment to the complainant and despite that the complainant did not return back the security cheques and hence he might misuse them in the future. Hence it has become clear that the payment regarding cheque in dispute was stopped by the accused vide letter dated 28.10.2011. Meaning thereby the cheque in dispute has been in possession of the complainant even before 28.10.2011. Hence in such circumstances wherein litigation between the parties has already been pending, the probability of giving of loan to the accused by the complainant is very less. Moreover, even the date and time of the loan alleged to be given by the complainant to the accused has not been mentioned in the complaint itself. These circumstances made it clear that in fact no such friendly loan was advanced by the complainant to the accused against which the cheque in dispute is alleged to be issued rather the cheque in dispute was a security cheque which was misused by the complainant and present complaint has been filed. On the basis of discussion made above I am of the considered view that the accused has been able to rebut the presumption arose in favour of the complainant and hence the accused is hereby acquitted of the charges leveled against him. His bail bonds and security bonds stand discharged. File be consigned to the record room after due compliance."

3. Since no one is appearing on behalf of the applicant-appellant, therefore, there is no option, except to dismiss the present application for non-prosecution.

4. Ordered accordingly.

5. Pending criminal misc. application(s), if any, shall also stand disposed off.

20.03.2024 **(MAHABIR SINGH SINDHU)**
SN **JUDGE**

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