IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

Date of Decision: 17.05.2024

CRM-A-1380-2023 (O&M)

AMRINDER SINGH
…..APPELLANT

VERSUS

JATINDER SINGH .....RESPONDENT

CRM-A-1414-2023 (O&M)

AMRINDER SINGH
…..APPELLANT

VERSUS

JATINDER SINGH .....RESPONDENT

CRM-A-1417-2023 (O&M)

AMRINDER SINGH
…..APPELLANT

VERSUS

JATINDER SINGH .....RESPONDENT

CRM-A-1437-2023 (O&M)

AMRINDER SINGH
…..APPELLANT

VERSUS

JATINDER SINGH .....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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Present: Mr HPS Rakhra., Advocate
for the Appellant.

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SANDEEP MOUDGIL, J

Vide this common order, the Court intends to dispose of above mentioned cases as common question of law and facts are involved therein. For the sake of convenience, the facts are taken from the main case bearing No. CRM-A-1380-2023.

1. The application under Section 378(4) CrPC has been filed by the appellant seeking leave to appeal against the judgment dated 08.08.2023 passed by JMIC, Ludhiana (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint bearing no. COMA-7483/2016 filed by the appellant under Sections 138 r/w 142 of the Negotiable Instruments Act, (in short, 'the NI Act'), on the ground that the appellant has failed to prove the guilt of the accused beyond shadow of reasonable doubt.

2. Briefly putforth, appellant is the brother of the accused-respondent who took the loan from the appeallant for his own personal use from time to time agreed to repay the same very shortly. The accused-respondent in order to discharge his existing legal liability of Rs. 40,00,000/- had issued cheque no. 110834 dated 07.09. 2014 for a sum of Rs. 10,00,000/- out of his account no. 10000719167 maintained by him in State Bank of India, Sector 23 C. Chandigarh as part payment in favour of the appellant with the assurance that the said cheque would be honoured on its presentation. When the appellant presented the above said cheque to its concerned bank, the same came out to be dishonoured with remarks "Insufficient Funds", “Drawer's Signatures Differs” & Alteration requires, full signatures " vide memo dated 08.09.2014.

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3. It is further stated that apart from the above cheque in question, the accused-respondent had also issued 3 more cheques bearing no. 110832 dated 07.07.20 14 cheque bearing no. 110833 dated 07.08.2014 and cheque bearing no. 110835 dated 07.10.2014 all drawn on State Bank of India, Sector 23 C. Chandigarh in discharge of his existing legal liability of Rs. 40,00,000/-. The appellant also filed two other complaints under Section 138 read with Section 142 of Negotiable Instruments Act against the accused-respondent upon dishonouring of the cheque no. 110833 and cheque no. 110832 dated 07.07.2014. Thereafter, the appellant then issued a legal notice dated 01.10.2014 to the accused-respondent, demanding payment within 15 days from the receipt of the notice failing which the accused-respondent was liable to be prosecuted for having committed an offence punishable under section 138 of NI Act however the accused-respondent did not pay back the amount so taken which compelled the appellant to register a complaint against the accused-respondent which was dismissed by the trail court vide order dated 08.08.2023. Hence, the instant appeal.

4. Counsel for the appellant contends that the trial court failed to appreciate the fact that the accused-respondent had himself issued cheques which clearly proves his legal liability added with the fact that same cheques had been exhibited as Exs.CX/1, CX/3 and CX/5 respectively but the same has not been taken into consideration by the trial court. Further, the accused-respondent neither denied his signatures on the cheque in question nor led any evidence that the same was forged and fabricated. He further contends that the affidavit(Annexure A-4) does not speak about the reasons for which the accused-respondent handed over four blank cheques and a promissory note to

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the appellant which itself creates a dent on the concocted story of the accused-respondent.

5. He vehemently argues that both the parties being educated would never give four blank cheques without any reason and without any writing to that effect. Therefore, the affidavit has been prepared in a manner to escape from the laibility of Rs.40,00,000/- and further, the trail court has failed to acknowledge the fact that in what capacity the accused-respondent had issued four blank cheques to the appellant which itself implies that the same has been executed in discharge of his legally enforceable debt.

6. He strenuously argues that the affidavit has been examined by the handwriting expert and as per the resport(Annexure A-5), the same document has been typed after taking signatures of the appellant on a blank paper and the affidavit is not genuine in nature wherein it has been prepared on a plain paper and later converted into a stamp paper by the use of adhesive stamps.

7. Having heard learned counsel for the appellant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

8. From perusal of the facts, it is clear at the very outset that the appellant has not been able to prove his source of arranging such an exorbitant amount in question which casts a doubt on the appellant version and the same has been supported by this court in ***"Shiv Dial Singh Vs Jitender Kumar and another 2015(4) RCR(Criminal) 939"*** wherein it has been held that:-

> "*There was a dishonour of cheque of Rs.2.50 lakhs. Complainant could not show source of money from which he has advanced the loan to the accused. Herein the accused was acquitted"*

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He has further failed to prove that he had actually advanced a loan of Rs.40,00,000/-. To utter dismay, from the perusal of the file in hand the court came across the fact that the appellant has not shown the alleged loan transaction in his Income Tax Returns in the last 25 years which is certainly a violation of Section 269 of Income Tax act which reads as under:-

> *269SS. [Mode of taking or accepting certain loans, deposits and specified sum. [Substituted by Finance Act, 2015 (No. 20 of 2015), dated 14.5.2015.]*
> *- No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,*
>
> *-(a)the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or*
>
> *(b)on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or*
>
> *(c)the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),is twenty thousand rupees or more:*
>
> *Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by, -(a)the Government;(b)any banking company, post office savings bank or co-operative bank;(c)any corporation established by a Central, State or Provincial Act;*

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(d)any Government company as defined in clause (45) of section 2 of the Companies Act, 2013, (18 of 2013);

(e)such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation. - For the purposes of this section,

-(i)"banking company" means a company to which the provisions of the Banking Regulation Act, 1949, (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(ii)"co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949, (10 of 1949);

(iii)"loan or deposit" means loan or deposit of money;

(iv)"specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.]

9. In the instant petition, the appellant had simply alleged that the accused-respondent had borrowed a friendly loan for a sum of Rs. 40,00,000/-. Further, the appellant has failed to prove anything in writing, details of any kind of monetary at any point of time and further by bringing in another version of his story by submitting that the amount in question was a part of “Family settlement” in the year 2011 wherein the accused-respondent had promised to

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repay the amount in May 2013 wherein no such family settlement has been placed on record. Since the said material fact has not been proved, the benefit of the same absolutely goes to the accused-respondent.

10.. Therefore, in my opinion, from the perusal of the file, it is abundantly clear that the accused-respondent succeeded in rebutting the presumption of legal liability wherein on one hand the appellant had deposed that he had lended the money to the accused-respondent amounting to Rs.40,00,000/- whereas on the other hand the averment of lending money to the accused-respondent has not been placed on record with any material document to prove, takes the case towards doubting the sanctity of the appellant's version and thus creating doubt in the mind of the court regarding his truthfulness.

11. Moreover, it is well settled proposition of law that the appellant has to stand on own legs to prove its case beyond shadow of reasonable doubt by proving the essential ingredients of section 138 of the NI Act which in the present case, he has miserably failed to do so.

12. In the light of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court and as such the present applications under Section 378(4)Cr.P.C are declined and accordingly, having no merit, the appeals also stand dismissed.

(SANDEEP MOUDGIL)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable :Yes/No

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