



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-A-1-2023

Date of Decision: 20.02.2024

BHASKAR SHARMA

.....APPELLANT

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohit Pal Singh Advocate
for the applicant/appellant.

Mr. Gagandeep Singh Chinna, AAG, Haryana.

SANDEEP MOUDGIL, J

CRM-A-105-2022

1. The application under [Section 378\(4\)](#) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 29.10.2022 passed by Judicial Magistrate, First class, Sirsa(in short, 'trial court') vide which respondent has been acquitted under section 138 of Negotiable Instruments Act 1881, (in short, 'the NI Act'), on the ground that the appellant has miserably failed to bring home the guilt of the respondent-accused.
2. Briefly put forth, the facts of the case are that the respondent-accused being in the business of sale and purchase of properties, allured the complainant-appellant to purchase a land at village Kakroli(Bhiwani) and the complainant-appellant having faith in respondent purchased the same by giving advance money of Rs. 55,00,000/-. The respondent-accused did not pay nay heed to give the possession of the land to the complainant-appellant which compelled him to ask fro his mony which the respondent-accused



discharged by issuing a cheque bearing no. 364913 dated 13.08.2014 amounting to 55,00,000/- drawn at SBI, Charkhi Dadri which got dishonoured with remarks as “*Insufficient Funds*” vide memo dated 13.08.2014. Thereafter, a complaint was registered by the appellant dated 08.09.2014 and a legal notice was issued but the respondent did not comply with the same which forced the appellant to file a complaint under section 138 of NI Act that has been dismissed by the trial court. Hence, the present appeal.

3. Counsel for the applicant contends that the trial court failed to appreciate the witnesses of appellant CW2, CW3 who are bank officials and rather their depositions and statements have not been given any weightage by the trial court.

4. He further contends that the trial court has failed to appreciate the fact that the cheque in question and the signatures over it of the respondent-accused have not been disputed and further, the documents in the form of jamabandi and other revenue records being placed on records have not been acknowledged by the trial court.

5. He vehemently argues that the trial court has failed to acknowledge that the cheque issued by the respondent-accused was in discharge of his legal liabilities.

6. Having heard learned counsel for the applicant 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.

7. It is evident from the record in hand, that accused-respondent is signatory of the cheque in question but on the other hand it is a settled



favour of the holder on the scale of preponderance of probabilities and the lack of consideration or a legally enforceable debt, need not to be proved to the hilt.

8. In the instant case, respondent-accused has clearly stated in his defence that the appellant got job in 4W infotech Co. through the respondent for the purpose of preparing Aadhar cards wherein the salaries of operators use to come in his account and for that he had provided two blank signed cheques bearing no. 364912 and 364913 so that the appellant may meet with the expenses of operators and machines, meaning thereby, the blank signed cheques is stated to have been misused by the appellant.

9. Moreover, from the perusal of the file it is clearly evident that the applicant in his cross examination had admitted to advance sum of Rs. 27,50,000/- to the respondent whereas in the complaint it is alleged to have advanced a sum of Rs. 55,00,000/- which itself compels this court to doubt the truthfulness of the appellant. Further, as has been alleged by the appellant that on previous account also, a sum of Rs. 3Lacs was advanced to the respondent-accused which apparently were not paid back which again creates a doubt on the appellant version as by no stretch of imagination a prudent man would advance a sum of Rs. 55,00,000/- to a person who on an earlier account had not paid back the previous loan.

10. In addition, it is well settled proposition of law that the complainant-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. However in the instant case, the case set up by the appellant-complainant do not inspire confidence of the court rather it lacks



11. 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 dated 29.10.2022 and as such , having no merit, the appeal stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

20.02.2024
anuradha

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