
PUNJAB AND HARYANA HIGH COURT**Before: Shekher Dhawan, J.**

CRM-A-1677-MA of 2017

Decided on: 26.11.2018

Market Committee, Bhawanigarh

Applicant

Versus

M/s Karan Traders and others

Respondents

Present: Mr. Preet Kawal Singh Gill, Advocate, for the applicant.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Cheque by husband – Criminal liability -- Liability was of M/s Karan Traders which is Sole Proprietorship – Cheque was issued by Husband of the Sole Proprietor – Held, there was no legal liability on the part of husband – Complaint rightly dismissed by Trial court.

(Para 2-5)**JUDGMENT****SHEKHER DHAWAN, J. –**

1. Present application under Section 378(4) read with Section 482 of the Criminal Procedure Code, for grant of leave to appeal, has been filed, while challenging the judgment of acquittal dated 20.05.2017 passed by learned Chief Judicial Magistrate, Sangrur, in a case under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. The applicant i.e. Market Committee, Bhawanigarh through its Secretary, was the complainant before the trial Court. The facts relevant for the purpose of decision of the application; that applicant-Market Committee, Bhawanigarh had fastened some liability upon firm M/s Karan Traders, which is the sole proprietorship firm through Sameera Singla, being sole proprietor on account of market fee. As the payment was to be made by Sameera Singla, some cheque was issued by Pawan Kumar in his capacity as husband of Sameera Singla, being sole proprietor of the firm M/s Karan Traders and thereafter, same cheque could not be encashed and complaint was filed.

3. Learned trial Magistrate passed the order dated 20.05.2017 while observing that there was no legal liability on the part of Pawan Kumar to make the payment of the cheque amount.

4. Learned counsel for the applicant contended that the said Pawan Kumar had already replied to the notice issued to Sameera Singla that the cheque was issued by him and, as such, admitted his liability.

5. Having considered the averments made by learned counsel for the applicant and appraisal of the record of the case file, this Court is of the considered view that learned trial Magistrate has rightly held that there was no legal liability on the part of Pawan Kumar in his capacity as husband of Sameera Singla. The liability, if any, is of M/s Karan Traders and Sameera Singla as sole proprietor of the firm and on that account there was no legal liability of Pawan Kumar and the learned trial Magistrate has rightly dismissed the complaint under Section 138 of the Act vide judgment dated 20.05.2017.

6. In view of the above, the present application is dismissed. However, it is made clear that the applicant-Market Committee, Bhawanigarh shall be well within its right to take alternative step to recover the market fee having been assessed against M/s Karan Traders through Sameera Singla.

Application dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Inderjit Singh, J.

Criminal Misc. No.A-1433-MA of 2018

Decided on: 02.11.2018

Satpal Singh

Applicant

Versus

Manjit Singh

Respondent

Present: Mr. Kamal Narula, Advocate for the applicant.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Code of Criminal Procedure, 1973 (2 of 1974), Section 378 (4) – Loan of Rs.8 lacs – Cheque bounce case – Presumption of – Rebuttal of -- In the complaint, it has been simply stated that the loan of Rs.8 lakhs was advanced to the accused in the month of March 2015 -- No specific date has been mentioned -- No other particulars have been given -- No security document had been obtained from the accused -- Complainant had also not taken any receipt of the loan -- There is no document on record to show the loan transaction -- There is no date as to when the loan was demanded back -- In the cross-examination, the complainant stated that he does not know accused and his family personally he knows them through brother-in-law of the accused -- Complainant admits that a sale deed was executed in his favour by the mother of the accused and further three cases were withdrawn by him -- All this evidence supports the defence version raised by the accused -- Presumption under Section 139 of the NI Act has been rebutted by the accused by raising probable defence -- Leave to file appeal dismissed.

(Para 8,9)

JUDGMENT

INDERJIT SINGH, J. –

1. The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. (as amended up-to-date) read with Section 372 Cr.P.C. against Manjit Singh for grant of leave to appeal against the impugned judgment dated 23.4.2018 passed by learned Judicial Magistrate 1st Class, Ferozepur, vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') has been dismissed and the accused has been acquitted of the charges as framed against him.

2. It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is