

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-250-MA of 2011 (O&M)
Date of decision: September 24, 2015

Desh Raj

...Applicant

Versus

Savitri Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rakesh Dhiman, Advocate
for the applicant.

Mr.Sonu Giri, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Desh Raj has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Savitri Devi, challenging the judgment dated 30.11.2010 passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby the complaint filed by the applicant was dismissed and accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that learned JMJC, Gurgaon, has illegally and unlawfully, without appreciating the evidence produced by the applicant, acquitted the respondent from the charges framed against her.

Notice of motion was issued and learned counsel for the respondent appeared and contested the application.

I have heard learned counsel for the parties and have gone through the record.

As per the record, the complainant Desh Raj filed a complaint against Smt.Savitri Devi under Section 138 of the Negotiable Instruments Act and Section 420 IPC. As per complainant's version, accused-respondent had taken a loan of ₹5 lacs from the complainant in the month of March 2006 and had promised to repay the same after some time along with interest. The complainant demanded the payment of ₹5 lacs but the accused always put off the matter and ultimately accused issued a cheque bearing No.541309/11002190 dated 29.01.2007 for ₹5 lacs drawn on State Bank of India, Mehrauli Road, Gurgaon from her account No.10572651934, in favour of the complainant. It is further the case of the complainant that when the cheque was presented for collection of the amount, it was returned dishonoured with the remarks 'Insufficient Funds'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

On the basis of the evidence, learned JMIC, Gurgaon, acquitted the accused-respondent vide impugned judgment dated 30.11.2010.

After hearing learned counsel for the parties and after going through the record, especially the impugned judgment, I find that learned JMIC, Gurgaon, held that presumption which has been

attached is a rebuttable presumption and the accused in order to discharge his burden has to prove only the preponderance of probability. Learned Magistrate has discussed the law on the point regarding rebutting the presumption. Further, the case of the accused is that complainant was terminated from the Government service on the ground of embezzlement. In the year, 2003-04, complainant took a loan from Pushkar Chauhan and a criminal complaint was filed against the complainant as his cheque was bounced which he issued to Pushkar Chauhan. Therefore, counsel for the accused argued that complainant himself is not in a position to repay his loan, then how he gave loan of ₹5 lacs to the accused.

I have also gone through the lower Court record. The complainant while appearing as witness before the Court has admitted all these facts in cross-examination that he has taken loan from Pushkar Chauhan and issued cheque to him which was bounced and complaint was filed. He further admitted that later on by paying ₹40,000/-, he compromised the matter. The case with Pushkar Chauhan was regarding cheque of ₹55,000/- only. If the present complainant could not repay the loan of ₹55,000/-, which he took from Pushkar Chauhan, then it looks doubtful that he would give a loan of ₹5 lacs to Savitri Devi in the month of March 2006. Otherwise also, there is no documentary evidence on record to show that from where the complainant brought such a huge amount of ₹5 lacs. Neither income tax return has been placed on record nor any security document was got executed by the complainant while giving the loan

of ₹5 lacs to accused Savitri Devi. From the cross-examination of PW-2 Desh Raj, it is also clear that he was not knowing Savitri Devi. Even, he could not tell, whether she is educated or illiterate lady.

The Court below also relied upon the reply Ex.DA given by the accused to the legal notice, where she has denied borrowing of loan. At the time of arguments, learned counsel for the applicant argued that husband of Savitri Devi is friend of the complainant. If husband of Savitri Devi is friend of the complainant, then the loan should have been given to him and not to Savitri Devi.

The Court, after discussing the evidence on record, held that complainant failed to prove his capacity for lending such a huge amount to the respondent. The Court correctly reached to the conclusion that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused.

Further, I find that it is admitted by the complainant in cross-examination that he is not an income tax payee. He also stated that he does not know as to who has filled the body of the cheque. He also stated that he cannot tell the date on which the loan was given. He further stated that amount was not withdrawn from the bank. He next stated that now-a-days, he is not doing anything except driving. He also stated that his government service has already been terminated in the year 2003.

Learned counsel for the applicant also argued that application under Section 311 Cr.P.C. has been dismissed by the Court. So far as that application is concerned, firstly, I find that the

evidence which the applicant wanted to produce was already in his knowledge, secondly, those facts are not stated in the complaint and the Court has correctly held that application under Section 311 Cr.P.C. cannot be allowed to fill up the lacuna.

In view of the above discussion, I find the findings given by learned JMJC, Gurgaon are as per evidence. In no way, the findings can be held as perverse nor there is anything on the record to show as to which material evidence has been misread or which material evidence has not been considered by the Court below. The judgment dated 30.11.2010 passed by learned JMJC, Gurgaon, is correct, as per law and evidence.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

September 24, 2015
Vgulati

(INDERJIT SINGH)
JUDGE