IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-915-MA of 2012 (O&M)
Date of decision: February 04, 2015

Gulshan Lal

...Applicant

Versus

Abhishek

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Dinesh Arora, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant has filed this application under Section 378(4) Cr.P.C. seeking permission for special leave to appeal against respondent challenging the judgment of acquittal dated 14.09.2012 passed by learned Judicial Magistrate Ist Class, Rohtak, whereby accused-respondent was acquitted.

It is stated in the application that appeal proposed to be filed by the applicant is good on merits and is likely to succeed in favour of the applicant. The impugned judgment is based upon surmises and conjectures. The said judgment has been passed by totally ignoring the material on record.

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

Gulshan Lal filed a complaint against accused Abhishek

Singla under Section 138 of the Negotiable Instruments Act on the allegations that accused had a friendly relation with the complainant and he took an amount of ₹9.50 lacs from the complainant for selling his land but later on accused refused to sell the land and issued cheque No.392805 dated 07.01.2009 amounting to ₹9.50 lacs in favour of the complainant drawn on Punjab National Bank, so as to discharge his legal liability. When the complainant presented the said cheque, it was returned unpaid with the remarks 'funds insufficient'. Legal notice was served and then present complaint was filed.

Learned JMIC, Rohtak vide judgment dated 14.09.2012 dismissed the complaint and acquitted the accused.

Accused in defence examined DW-1 Seeta Ram, who stated that he is the employee of the accused at his shop. He further stated that accused gave him a blank signed cheque in January 2009 and stated that after verifying the amount from the electricity bill, fill the blank cheque with amount of bill and deposit the same at the electricity office. The defence witness went to the house of the accused and brought the electricity bill at the shop of the accused and put the blank signed cheque in the drawer of the accused. He further stated that when he brought the bill from the house, one Sunil Taneja was also sitting in the office and on seeing the witness, Sunil Taneja asked him to bring a cup of tea for him. When the witness returned with the tea, he found that Sunil Taneja had gone and signed blank cheque was also missing from the drawer and he stated the whole story to the accused.

The perusal of the record shows that in the present case, complainant has alleged that he has given friendly loan to the accused of ₹9.50 lacs but no particulars of the loan have been mentioned as to on which date and in whose presence the loan was given. There are no such particulars given in the complaint. The financial capacity of the complainant has also not been proved as to how he gave ₹9.50 lacs in one go to the complainant as loan. There is no documentary evidence on record to show the financial capacity of the complainant. Secondly, there is no document on record that from where this amount of ₹9.50 lacs has come. There is also no document on record whether this amount has been paid by negotiable instrument or whether this amount has been withdrawn from the bank. No receipt has been taken from the accused while lending such a huge amount. No document has been got executed of any type. No security has been taken while lending the amount of ₹9.50 lacs. No document of any type has been produced on the record to show that this amount has been actually lent. As per the provisions of Income Tax Act, such a huge amount cannot be given in cash except by negotiable instrument.

Again, if the amount has been given for purchasing the land of the accused, then why the agreement of sell has not been executed or why the sale deed was not got executed at that time. No particulars of land has been given as to how much land accused agreed to sell and for what price and when the sale deed was to be executed etc.

Therefore, in these circumstances, when the complainant failed to prove the lending of ₹9.50 lacs by producing cogent evidence on record, the presumption that the cheque has been issued to discharge the legal liability of the debt, is rebutted from the evidence of the complainant itself.

The argument that no FIR has been lodged regarding taking of blank cheque by Sunil Taneja, is no ground to grant leave to appeal. Firstly, the complainant is to show that he had the capacity to lend such a huge amount and actually he has lent the same. Neither particulars have been mentioned regarding the lending of amount nor any document has been produced to show the financial capacity etc. to show from where this amount has come to the complainant.

Keeping in view the facts and circumstances of the present case, I find that the impugned judgment dated 14.09.2012 passed by learned JMIC, Rohtak is correct and as per law and does not require any interference from this Court. Accordingly, I find that no ground is made out to grant permission for special leave to appeal and therefore, the present application stands dismissed.

February 04, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**