

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-295-MA of 2013 (O&M)
Date of decision: December 19, 2015

Priya Joseph

...Applicant

Versus

Rajesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kunal Dawar, Advocate
 for the applicant.

None for the respondent.

INDERJIT SINGH, J.

Applicant-Priya Joseph has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Rajesh Kumar, challenging the judgment dated 22.04.2013 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby the 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 judgment of acquittal passed by learned trial Court is based upon total misreading and mis-appreciation of evidence and the same cannot be sustained. It is prayed that applicant be granted leave to appeal against the impugned judgment dated 22.04.2013 passed by learned trial Court.

As per the record, the complainant Priya Joseph filed a complaint against accused Rajesh Kumar under Section 138, 141 and 142 of the Negotiable Instruments Act and Section 420 IPC. As per

complainant's version, accused took a friendly loan of ₹32,000/- from the complainant for his personal use in June, 2009 and the accused promised to repay the same to the complainant within a period of six months. Thereafter, accused in discharge of his existing liability to make the payment of the said loan, issued cheque bearing No.024618 drawn on ICICI Bank Ltd. dated 30.04.2010, which on presentation was returned with the remarks 'insufficient funds'. Legal notice was issued to the accused. When the amount was not paid then the complaint was filed.

Learned JMIC, Faridabad, vide impugned judgment dated 22.04.2013, after appreciating the evidence on record, acquitted accused-respondent of the charges framed against him.

Notice of motion was issued but none appeared on behalf of the respondent despite service.

I have heard learned counsel for the applicant and have gone through the record, especially the judgment passed by learned JMIC, Faridabad.

From the record, I find that the findings given by learned trial Court are correct, as per evidence and law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below. From the perusal of the record, I find that learned Magistrate gave reasonings while appreciating the evidence in right perspective. In the present case, the complaint was filed by Priya Joseph, who has not appeared in the witness box. She was the proprietor of M/s Reliable

Enterprises but this complaint has been filed through her Special Power of Attorney, her husband V.S.Joseph, who has appeared in the Court as CW-1. He stated in chief-examination that accused took ₹32,000/- from the complainant for his personal use in the month of June 2009 and deposed as per complainant's version. In the cross-examination, he admitted that accused used to work in the office of the complainant as field boy. He also stated that he had given the loan of ₹32,000/- to the accused in his office. He further admitted that he had not shown the loan amount in his income tax return. He next stated that he had never given any other friendly loan to anybody else. Learned trial Court held as per the complainant's version, the loan was given by her and not by her attorney but the attorney came into witness box and he totally improved the statement of the complainant by stating that he had given loan to the accused. The Court held that in the chief-examination, CW-1 has stated that loan was taken by the accused from Priya Joseph but in cross-examination, he stated that he handed over the said amount to the accused in his office. The Court also taken note of the fact that it is also admitted that the accused was working as a field boy in the firm of the complainant and was an employee. CW-1 admitted in cross-examination that no friendly loan had ever been advanced to anybody else except the accused. There is nothing as to why the loan of ₹32,000/- was given to its employee and that too without interest and without executing any document. Otherwise also, if the accused is employee and working as field boy with the complainant, then complainant can deduct the

amount by way of installments from his pay. What was the necessity to take the cheque from the accused? Nothing has been mentioned in the complaint as to why the loan of ₹32,000/- was given by the complainant to one of its employee and that also without interest and without any document. The Court in the facts and circumstances of the present case and in view of the inconsistency in the evidence, held that accused has raised probable defence that he never took any loan from the complainant and therefore, it cannot be said that the cheque Ex.C1 was issued by the accused in discharge of his existing debt or liability in favour of the complainant. No record of the firm etc. has been produced to show entries regarding the loan advanced to the accused. The complaint has been filed by Priya Joseph, not in personal capacity but as proprietor of M/s Reliable Enterprises, therefore, there would have been account of the firm showing advancement of the loan to the accused.

In view of the above discussion, I find that the findings given by learned JMIC, Faridabad, are as per evidence. The judgment dated 22.04.2013 passed by learned JMIC, Faridabad, is correct, as per law and evidence and does not require any interference from this Court.

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.

December 19, 2015
Vgulati

(INDERJIT SINGH)
JUDGE