

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1115-MA of 2014 (O&M)
Date of decision: November 16, 2015

K.D.Bishnoi

...Applicant

Versus

Satpal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Saini, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-K.D.Bishnoi filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Satpal, challenging the judgment dated 14.05.2014 passed by learned Judicial Magistrate Ist Class, Hisar, 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 from the statements of PW-1 applicant and PW-2 Het Ram and documentary evidence, the ingredients of Section 138 of the Negotiable Instruments Act are made out and presumption under Section 139 of the NI Act is also raised against the accused-respondent but the trial Court did not consider and appreciate the evidence on record in its true prospects and has passed by impugned

judgment by misreading the evidence. Therefore, the impugned judgment is not sustainable in the eyes of law.

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

As per the record, the complainant K.D.Bishnoi filed a complaint against Satpal under Section 138 of the Negotiable Instruments Act. As per complainant's version, for discharging an existing outstanding and legally enforceable liability, the accused had issued a cheque bearing No.114961 dated 24.06.2010 for a sum of ₹3,30,000/- drawn on Punjab and Sind Bank, Hisar in favour of the complainant. However, the cheque on presentation by the complainant for encashment, got dishonoured with the remarks 'account closed'. Legal notice was served and when the payment was not paid, then the complaint was filed. The complainant as well as the accused produced the evidence.

After going through the evidence on record and after hearing learned counsel for the parties, learned JMJC, Hisar acquitted the accused by holding that presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused.

After perusing the impugned judgment as well as the record, first of all I find that nothing has been mentioned in the complaint as to when and where the loan was given or what is the existing liability. No particular date, month and year has been mentioned. Secondly, the complainant is income tax payee but he has not shown the loan amount in the income tax return. Further, the

loan of more than ₹20,000/- cannot be given except by way of negotiable instrument as per Income Tax Act. No source has been proved. To prove the source, the complainant stated that he borrowed the amount from the father-in-law of his son but even this fact has not been mentioned in the income tax return. Otherwise it looks unnatural to give a loan to a person, who is not very close by borrowing the same from someone else and it also creates doubt. Furthermore, PW-2 Het Ram has stated that he brought ₹15,000/- by selling his buffalo and ₹2,15,000/- by selling crops but no documentary evidence regarding selling the crops etc. has been produced. Mere tendering a jamabandi to show land is not sufficient. The case of the accused is that he has not borrowed money from the applicant. A complaint was filed regarding missing of cheques and the FIR was got registered on 16.03.2010 and the cheque in question is stated to be 24.06.2010. In view of these facts and circumstances, the Court below rightly held that presumption under Section 139 of the Negotiable Instruments Act has been rebutted.

The perusal of the impugned judgment shows that it is as per the evidence on record. In no way, it can be held as perverse. Nothing has been pointed out as to which material evidence has not been considered and which material evidence has been misread by the Court below. The evidence has been appreciated in right perspective.

In view of the above discussion, I find that the judgment dated 14.05.2014 passed by learned JMJC, Hisar, 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.

November 16, 2015
Vgulati

(INDERJIT SINGH)
JUDGE