

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1427-MA of 2015 (O&M)
Date of decision: December 18, 2015

Sunil Kumar

...Applicant

Versus

Swaraj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pritam Singh Dhanoa, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sunil Kumar has filed this application under Section 378(4) Cr.P.C. read with Section 372 Cr.P.C. seeking permission for leave to appeal against respondent Swaraj Kumar, challenging the judgment dated 08.06.2015 passed by learned Suib Divisional Judicial Magistrate, Anandpur Sahib, 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 it would be in the interest of justice if this Court grants leave to the complainant-applicant for filing the appeal against the judgment of acquittal.

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

From the record, I find that complainant Sunil Kumar filed a complaint under Section 138 of the Negotiable Instruments Act against Swaraj Kumar by stating that the accused borrowed ₹90,000/- from him in the month of October 2011 for his domestic need with a promise to return the same within two months. It is also stated that accused issued cheque bearing No.430309 dated 13.01.2012 amounting to ₹90,000/- drawn on Punjab National Bank, which on presentation, returned back with the remarks 'no such account'. Legal notice was served. When the amount was not paid, then the complaint was filed.

Learned SDJM, Anandpur Sahib vide impugned judgment dated 08.06.2015, after appreciating the evidence, acquitted the accused-respondent.

From the record, I find that the reasonings given by learned SDJM, Anandpur Sahib, are correct and as per evidence. There is nothing from which it can be held that the judgment is perverse or against the evidence. 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. There is also nothing on the record as to whether the judgment passed by learned lower Court is perverse or against the law.

The perusal of the record shows that firstly in the complaint, the complainant has not given any date as to when the loan was given. It was only stated that loan was given in the month of October 2011. When the complainant appeared as a witness in the

Court, he stated that he has paid ₹90,000/- to the accused in September 2011. He further stated in cross-examination that he has paid money to the accused in installments and accused sometimes took ₹20,000/- and sometimes took ₹15,000/- from him in the month of April-May. This statement of the complainant itself creates doubt as to whether the loan was given to the accused or not. No particulars are given regarding the fact as to when the loan was given i.e on which date. Moreover, the complainant while appearing as a witness has given totally new and contradictory version. The Court also discussed that the complainant has earlier stated that he has not given the loan to any other person but when cross-examined, he admitted that he has filed four cases including present complaint on the basis of cheques and out of which three are pending in that Court and one is pending in the Court of learned JMIC, Anandpur Sahib, in which he has advanced loan of ₹90,000/-. The Court also discussed provisions of Punjab Registration of Money Lender's Act, 1938.

Further, learned SDJM had discussed that as per complainant's version, he has withdrawn ₹40,000-45,000/- from the Syndicate Bank on 07/08.10.2011, ₹30,000/- from Punjab National Bank in September 2011 and ₹20,000/- was lying as cash with him. The Court held that though the statements of accounts have been placed on record but on these dates the amount has not been withdrawn.

Further, from the record, I find that no document has been produced to show the lending of the amount to the accused. No

income tax return has been placed on record to show that this amount has been borrowed by the accused.

Keeping in view the evidence on record, I find that learned SDJM, Anandpur Sahib has discussed the evidence in right perspective. The judgment dated 08.06.2015 passed by learned SDJM, Anandpur Sahib, 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.

December 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE