

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1503-MA of 2014 (O&M)
Date of decision: August 17, 2015

Budhwant Lal

...Applicant

Versus

Veer Bhan

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Goyal, Advocate
for the applicant.

Mr.Siddharth Gulati, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Budhwant Lal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Veer Bhan respondent, challenging the judgment dated 22.07.2014 passed by learned Judicial Magistrate Ist Class, Kaithal, whereby the complaint filed by the applicant was dismissed and accused-respondent was acquitted.

It is stated in the application that learned JMJC, Kaithal has committed a grave error of law while acquitting respondent-accused by holding that the complainant failed to prove that accused issued the cheque in dispute in order to discharge his existing legal liabilities and accused succeed to rebut the presumption that cheque in dispute

was not issued by him in favour of complainant in order to discharge any existing legal liabilities. Along with this application, appeal has also been filed.

Notice of the application 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.

From the record, I find that Budhwant Lal complainant filed the complaint under Section 138 of the Negotiable Instruments Act against Veer Bhan. It is the case of the complainant that in discharge of existing liability, accused issued a bank cheque bearing No.366629 dated 15.04.2009 for a consideration of ₹40,000/- out of his account No.01190017259 drawn on State Bank of India. The said cheque was presented in the said Bank on 17.04.2009 for encashment but the said cheque was received back as it stood dishonoured as there was no sufficient amount to honour the same in the account of the accused. Registered notices dated 23.04.2009 and 29.04.2009 were served upon the accused

The perusal of the facts of the case and after hearing learned counsel for the parties, it is clear that in the complaint no particulars of the liability have been given. No date, month or year has been given nor any amount has been given. No document has been produced to show any transaction of loan etc. with the accused.

The trial Court has discussed the evidence on record. The presumption under Section 139 of the Negotiable Instruments Act can

be rebutted from the evidence of the complainant itself. The perusal of the record shows that there is nothing on the record to show that the loan has been advanced by the complainant to the accused. The advancement of ₹40,000/- to the accused has not been shown in the income tax return by the complainant. If complainant has given the loan to the accused without any documents and not in the presence of any witness, then in these circumstances, he should have maintained the record regarding the fact as to whom he advanced money and on which terms and conditions. The Court held that the complainant failed to examine any witness in order to support his contention that any amount was advanced by him to the accused. The Court further held that complainant failed to prove the fact that he advanced any amount to the accused.

In view of the findings given by learned JMIC, Kaithal, in no way, these can be held as perverse nor it can be held that learned JMIC, Kaithal has misread the evidence or has not considered the material evidence.

In view of the above discussion, I find that the judgment passed by learned JMIC, Kaithal, is correct, as per evidence and law 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.

August 17, 2015
Vgulati

(INDERJIT SINGH)
JUDGE