

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1593-MA of 2015 (O&M)
Date of decision: November 03, 2015

Baldev Raj

...Applicant

Versus

Gagandeep Mehta

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikas Bali, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-Baldev Raj has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Gagandeep Mehta challenging the judgment dated 09.07.2015 passed by learned Addl. Sessions Judge, Ludhiana, whereby the accused-respondent was acquitted in appeal by setting aside the judgment of conviction and order of sentence dated 04.09.2013 passed by learned JMJC, Ludhiana.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is stated in the application that learned Judicial Magistrate 1st Class, Ludhiana allowed the complaint filed by the complainant-applicant and convicted the accused-respondent to undergo simple imprisonment for a period of 15 months along with fine of ₹2000/- vide judgment of

conviction and order of sentence dated 04.09.2013. It is further stated that learned Addl. Sessions Judge, Ludhiana, has erred in acquitting the accused.

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

As per the record, the complainant Baldev Raj filed a complaint against Gagandeep Mehta under Section 138 of the Negotiable Instruments Act read with Section 420 IPC. As per complainant's version, the accused is known to him and he borrowed a sum of ₹3,50,000/- from the complainant as friendly loan. In discharge of his legal liability, accused issued a cheque bearing No.061374 dated 20.10.2010 for ₹3,50,000/- drawn on ICICI Bank Limited. The cheque when presented, returned back by the Bank with the remarks 'Insufficient Funds'. Legal notice was served and when the payment was not made, then the complaint was filed.

On the basis of the evidence, the accused-respondent was convicted and sentenced by learned JMJC, Ludhiana as stated above. Aggrieved from the above-said judgment of conviction and order of sentence, an appeal was filed by the accused, which was accepted by learned Addl. Sessions Judge, Ludhiana and accused-respondent was acquitted.

From the record, first of all, I find that the complainant has nowhere stated the date, month and year in the complaint as to when loan was given to the accused. Secondly, the version of the accused is that one Chetan Baweja was having cheque in question, which he

handed over to complainant and he has misused the same. Learned Addl. Sessions Judge, Ludhiana, while discussing the cross-examination of the complainant, held that the complainant used to earn ₹14,000/- to ₹15,000/- per month. It is also stated by the complainant that accused had taken loan from him at least 30 times in seven years to the tune of ₹50,000-60,000/-. He never shown the loan amount given to accused in his income tax return or in his statement of account. He further deposed that accused used to issue security cheques to him as and when he obtains loan. The complainant also stated in cross-examination that he did not have mobile number of accused. This cross-examination creates doubt regarding capacity of the complainant to lend such an huge amount of ₹3,50,000/-. When the loan was given, it was not shown in the income tax return nor in any other document. Furthermore, the complainant was not even having the mobile number or any other number of the accused to show that he has friendly relations with the accused and it creates doubt. Moreover, no security document has been taken at the time of lending the loan. The complainant has arranged the amount from his savings and that of his wife as stated by him but no such document has been placed on record. Similarly, complainant stated that he had sold his house at Dharampura in the year 2005 but neither the sale deed was in his name nor in the name of his any family member. Therefore, the Court held that no source of huge amount of ₹3,50,000/- has been disclosed by the complainant. He has not produced his savings bank account or of his wife. The complainant

also stated in his cross-examination that his son got electric shock and he spent lot of money over his treatment and due to this reason, he could not earn his regular income and earned ₹10,000/- per month.

In the facts and circumstances of this case, it looks doubtful that complainant will lend such an huge amount of ₹3,50,000/- without getting executed any document. No document is there regarding advancement of any other earlier loan. The Court held that neither sale deed of any property sold in the year 2005 has been produced nor property was in the name of the complainant or his family member. The Court below in view of these facts and circumstances held that presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused-respondent. The accused also produced himself as DW-1 and also examined DW-2 Chetan Baweja.

At the time of arguments, learned counsel for the applicant only pressed upon the statement of the accused given before learned Addl. Sessions Judge, Ludhiana, that he has compromised with the complainant and he will pay the amount before 20.04.2015 to the complainant. In no way, on the basis of this statement the accused can be convicted. There may be so many reasons for making this statement i.e. to save himself from the harassment of the criminal trial etc. In no way, this statement can be held as confession before the Court.

The findings given by learned Addl. Sessions Judge, Ludhiana, in no way, can be held as perverse or against the evidence

nor in any way, it can be held that evidence has not been discussed in right perspective. Nothing has been pointed out as to which material evidence has not been considered or which material evidence has been misread by the Court below.

In view of the above discussion, I find that the judgment dated 09.07.2015 passed by learned Addl. Sessions Judge, Ludhiana, 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 03, 2015
Vgulati

(INDERJIT SINGH)
JUDGE