

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-162-MA of 2015 (O&M)
Date of decision: November 16, 2015

Kuldeep Singh

...Applicant

Versus

Sukhbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunil K Tondon, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-Kuldeep Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sukhbir Singh, challenging the judgment dated 20.10.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 learned trial Court is perverse and contrary to facts and evidence on record and liable to be set aside. It is also stated that applicant shall suffer irreparable loss and it is prayed that special leave to appeal be granted.

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

As per the record, the complainant Kuldeep Singh filed a complaint against Sukhbir Singh under Section 138 of the Negotiable

Instruments Act. As per complainant's version, accused borrowed a sum of ₹4 lacs from him in the month of September 2007, for marriage of his niece, for a period of two years. The accused also executed an agreement in favour of the complainant and assured the complainant that he will return the money within two months along with interest @ 2% per month. In September 2009, the accused did not repay the money and sought further time for repayment and the said time was extended by the complainant by further two years and in discharge of this existing liability towards the complainant, the accused issued a cheque bearing No.005173 dated 18.10.2011 in the sum of ₹7,84,000/- drawn on Punjab National Bank, Branch Shahbad Markanda, District Kurukshetra. When the cheque was presented in the bank for encashment, it was returned back with the memo 'Funds Insufficient'. Legal notice was served and when the payment was not made, then the complaint was filed.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence held that the presumption under Section 139 of the Negotiable Instruments Act has been rebutted. The Court further held that the version of the complainant that money was given by him to the accused on 28.09.2007 and cheque in question is dated 18.10.2011, which happens to be the date after the expiry of three years from date on which loan was advanced, happens to be a cheque which has been issued in discharge of a time barred debt. Learned Magistrate discussed the law on the point and held that in the facts and circumstances of the present case, it cannot be held as

promise between the parties within the meaning of Section 25(3) of Contract Act. The Court held that there is mention of giving the blank cheque in the agreement Ex.C1 which is dated 28.09.2007 and the date of the cheque is 08.10.2011 i.e. after four years, which has been filled by the complainant without prior permission of the accused. The Court below also held from the evidence that the agreement Ex.C1 is surrounded by suspicious circumstance and cannot be given much weightage by the Court. The agreement having been drafted in blanks and blanks having been filled up later is proved. The column of account number and cheque number has been left blank in the agreement. Even the amount of ₹4 lacs and ₹2 lacs mentioned in the agreement appears to be filled up later, in the agreement, from the spacing and the manner in which it has been so typed. The Court below further held that complainant in cross-examination has stated that he does now know where the Shahabad Court is situated. The agreement Ex.C1 has been notarized by an Advocate sitting at Shahabad Court. If the complainant never visited the Shahabad Court and does not know its location, then it cannot be believed that agreement Ex.C1 could have been executed at Shahabad Courts. The agreement Ex.C1 has been written on 28.09.2007 and notarized on 01.10.2007. The Court held that accused was earning about ₹4-5 lacs per annum, as per cross-examination of the complainant, from the agricultural land and he has no child. Only he and his wife are to be maintained. The Court also held that the accused is dealing with the firm M/s Shish Pal Parveen Kumar commission agent. It is

admitted by the complainant that his father is one of the partner in the said firm. These facts support the defence version that the blank cheques and papers have been taken by the commission agent which have been misused by the complainant in connivance with his father. The Court also held that the complainant is permanently settled at Jagadhri since the year 2000 whereas the said firm is stated to be working in Shahabad since the year 2003 and the accused is resident of village Sudpur, Tehsil Thanesar, District Kurukshetra.

The perusal of the judgment passed by the Court below shows that reasoning has been given as per evidence on record by appreciating the evidence in right perspective. Nothing has been pointed out as to how the findings given by learned JMIC, Yamuna Nagar at Jagadhri are 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.

In view of the above discussion, I find that the findings given by learned JMIC, Yamuna Nagar at Jagadhri, are as per evidence. In no way, the findings can be held as perverse. The judgment dated 20.10.2014 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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