IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1739-MA of 2014 (O&M)
Date of decision: September 14, 2015

Prem Kumar

...Applicant

Versus

Kulwinder Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kiran Kumar, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Prem Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Kulwinder Kaur, challenging impugned judgment dated 22.08.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, whereby the complaint filed by the applicant was dismissed and accused-respondent was acquitted.

It is stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. The impugned judgment dated 22.08.2014 passed by learned trial Court is cryptic, illegal and beyond the evidence available on record.

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

As per the record, the complainant Prem Kumar filed complaint against Kulwinder Kaur under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused Kulwinder Kaur along with other persons have taken a sum of ₹1,80,000/- from him on the pretext of arranging 10 years' VISA of USA for him and remaining amount is to be paid after getting passport along with VISA. Upon the failure of accused to do so and to return the amount taken, she issued two cheques bearing No.060223 dated 01.07.2009 for a sum of ₹1 lac and No.060224 dated 14.07.2009 for a sum of ₹80,000/-, both drawn on Union Bank of India, Chugitti, Jalandhar from her account No.41230 in favour of the complainant. On the presentation, the said cheques were returned back dishonoured with remarks 'funds insufficient'. Legal notice was served. When the amount was not paid back, then the complaint was filed.

On the basis of evidence, learned JMIC, Jalandhar acquitted the accused-respondent vide impugned judgment dated 22.08.2014.

First of all, I find that nothing has been pointed out as to how the findings given by the learned JMIC, Jalandhar are perverse and which evidence has been misread by the Court. There is nothing on the record to show that any material evidence has not been considered by the Court. The version of the accused is that the cheques in question have been issued to complainant in the year 2005-06. She has also taken the defence that her father-in-law has taken a sum of ₹1 lac from the complainant for sending her husband abroad before the year 2004 and in order to establish this fact, she has produced on record her original passbook which is Ex.DE and copies of cheques Ex.DB to Ex.DD showing the fact that these cheques have been issued in the name of complainant in the year 2005-2006 to repay the said loan of 2004. As per the version of the complainant, the accused approached him only in 2007, thus the fact that why he received cheques Ex.DB to Ex.DD from the accused in the year 2005-2006 goes unexplained on the part of the complainant. The accused has also produced on the record one application moved by the complainant himself before the police authorities proved by DW-2 stating the fact that one Jagdish Kumar has introduced him to the accused and other persons namely Sucha Ram DW-3 and Des Raj, in May 2007, on the pretext of arranging USA Visa for him for 10 years on the payment of ₹7 lacs in total and out of that amount, he paid a sum of ₹80,000/- to accused Kulwinder Kaur. After failing to arrange VISA, the complainant approached them in May 2009 and on demand, accused issued cheques in question payable in July 2009, which were dishonoured. DW-2 Head Constable Nirmal Chand proved the report of Enquiry Officer dated 17.09.2009 showing the fact that above-said complaint has been withdrawn by the complainant himself by stating that he has already compromised the matter with the accused and other persons and does not want to proceed with the said complaint. The copy of the said complaint as DW2/A.

The Court has also taken the note that cheques have been issued in the year 2005 and entries in the passbook Ex.DE also show that cheques have been used upto 2005 and thereafter, a new cheque book has been issued in the name of accused on 04.01.2006 and the accused started using the same from 04.01.2006. After that no entry as per passbook of accused has been shown using cheques of earlier series of 2005.

Learned Magistrate, after discussing all these facts held that presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused. Learned Magistrate also discussed statement of DW-3 Sucha Ram, who stated that husband of the accused has gone abroad since 2004 i.e. in the year in which the accused is alleging that amount of ₹1 lac has been taken from the complainant for sending her husband abroad. The copy of the passport of Raj Kumar, husband of accused is also produced on the record as Ex.DW3/1.

The Magistrate disbelieved the version of the complainant from the evidence produced on the record and from the defence version. The Court below also discussed the fact that cheques in question have been signed by the accused in Punjabi but these cheques have been filled in English having the signatures of complainant at its back. DW-3 deposed that accused is an illiterate lady, who does not know English.

The perusal of the record, shows that judgment passed by learned JMIC, Jalandhar is correct, as per law and evidence. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. The version of the complainant is not believable. Nothing has been pointed out as to which evidence has been misread or which material evidence has not been considered by the Court below.

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.

September 14, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**