

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1839-MA of 2014 (O&M)
Date of decision: August 20, 2015

Mukesh Kumar

...Applicant

Versus

Balwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Satbir Rathore , Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Mukesh Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Balwinder Singh, challenging the judgment dated 03.07.2014 passed by learned Judicial Magistrate Ist Class, Karnal, whereby the complaint filed by the applicant was dismissed and accused-respondent was acquitted. Along with the application, appeal has been filed.

It is stated in the application that accompanying appeal is being filed which is likely to be succeeded on the basis of the grounds taken therein. Learned trial Court has wrongly and illegally acquitted the respondent vide its judgment dated 03.07.2014. The judgment of acquittal is wrong, erroneous and against the facts and evidence on record and resulted into miscarriage of justice. It is, therefore, prayed

that leave to file appeal against the judgment of acquittal dated 03.07.2014 be granted.

The brief facts of the case are that Mukesh Kumar filed a complainant against Balwinder Singh under Section 138 of the Negotiable Instruments Act, on the grounds that accused-respondent used to sell his agricultural produce through him. With passage of time, they developed good relations with each other. In the month of September 2012, accused approached complainant to borrow an amount of ₹1,60,000/- to meet his personal needs. Acceding to his request, the complainant paid an amount of ₹1,60,000/- as a loan to the accused. To discharge his liability, accused issued a cheque No.083411 dated 25.12.2012 of ₹1,60,000/- drawn at Punjab National Bank, Karnal, in favour of the complainant. When the cheque was presented, it was returned by the Bank vide memo dated 27.12.2012 with the remarks 'Account closed'. Therefore, statutory legal notice was duly served upon the accused. The accused gave the reply to said legal notice but did not make payment and hence the complaint was filed.

Learned Judicial Magistrate Ist Class, Karnal, on the basis of the evidence produced by the parties, acquitted the accused-respondent.

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

The perusal of the record and specially the judgment passed by learned JMJC, Karnal, shows that the findings given by

learned Magistrate are correct, as per evidence and law. Learned Court below has discussed that the presumption is available under Section 139 of the Negotiable Instruments Act, in favour of the holder of the cheque but it is a rebuttable presumption. The Court also held that this presumption has been rebutted on the ground that firstly there is no document on the record to prove advancing of loan, especially when the complainant is a commission agent. No document has been produced regarding borrowing of the loan by the accused from the complainant. There is no entry in any of the account books of the complainant. Learned Magistrate has correctly held that the complainant is a businessman and he used to maintain account books, then why no entry was made in the account books regarding the amount given to the accused. Secondly, it is in the evidence that accused has already stopped selling his agricultural produce at the firm of the complainant since the year 2011 itself. In no way, it can be held that complainant was having good relation afterwards with the accused in the month of September 2012. There is no question of advancing loan afterwards to the accused by the complainant.

Further, as per the evidence, the account was already closed by the accused on 15.11.2011. Therefore, the cheque book of the cheque in question would have been issued by the Bank before the account was closed. Therefore, the version of the accused that the cheque in question with the commission agent is of earlier period when the accused used to sell the crop and it has been fabricated and

misused by the complainant, is a reliable version. There is no evidence on the record that the amount has been shown by the complainant in the income tax return. The reply to the legal notice has already been filed by the accused as per the complainant's version itself.

In view of the above discussion, I find that the findings given by learned JMIC, Karnal are correct, as per evidence on record. Nothing has been pointed out as to which evidence has been misread by the Court and how the findings are perverse or against the law. The judgment dated 03.07.2014 passed by learned JMIC, Karnal, is correct, as per evidence and law.

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 20, 2015
Vgulati

(INDERJIT SINGH)
JUDGE