

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-29-MA of 2015 (O&M)
Date of decision: September 14, 2015

Sandeep Virk

...Applicant

Versus

Himesh Sablok

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.K.Singal, Advocate
for the applicant.

Mr.Salil Sablok, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Sandeep Virk has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Himesh Sablok, challenging the judgment dated 05.09.2014 passed by learned Judicial Magistrate Ist Class, Chandigarh, 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 05.09.2014 passed by learned trial Court is totally illegal, wrong, perverse and unsustainable and liable to be reversed and the respondent is liable to be convicted.

Notice of motion 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.

As per the record, the complainant Sandeep Virk filed complaint against Himesh Sablok under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused in discharge of his personal loan liability towards complainant issued cheque bearing No.548697 of ₹5 lacs drawn at Punjab National Bank, Sector-17B, Chandigarh, in favour of the complainant. On presentation, the cheque was returned back unpaid with the remarks 'Funds Insufficient'. Then legal notice was sent to the accused but he did not make the payment and the complaint was filed.

After serving the notice containing substance of accusation on 27.02.2013, the complainant was called upon to lead evidence in order to bring home the guilt of the accused. Complainant's counsel placed on record affidavit of complainant. Thereafter, complainant neither appeared for his evidence nor produced any other witness. It is discussed by learned JMJC, Chandigarh that complainant has availed six effective opportunities over a time span of more than one year but he failed to conclude his evidence. The case remained pending for examination of complainant himself but he did not step into witness box. It is further discussed that complainant was absent on 24.07.2014 and his exemption was allowed on 24.07.2014 with specific directions that he should be

present for his examination on next date of hearing. A costs of ₹200/- was imposed and last opportunity was granted to complainant to conclude his entire evidence. The complainant even then, neither appeared nor deposited costs and failed to conclude his evidence, which clearly show that complainant is not interested in the prosecution of this case. The evidence of the complainant, in these circumstances, was closed by learned JMIC, Chandigarh and accused-respondent was acquitted.

The perusal of the impugned judgment passed by learned JMIC, Chandigarh shows that the complainant has already availed reasonable opportunities including last opportunity that too with costs and even the costs was not deposited. No reason or ground has been given as to why the complainant could not come present for his examination. Nothing has been argued at the time of arguments nor any explanation has been given for non-examination of the complainant and his witnesses.

From the above, I find that impugned judgment dated 05.09.2014 passed by learned JMIC, Chandigarh, 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.

September 14, 2015
Vgulati

(INDERJIT SINGH)
JUDGE