

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-48-MA of 2015 (O&M)
Date of decision: September 21, 2015

Suraj Bhan Gupta

...Applicant

Versus

Sukhwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Gupta, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Suraj Bhan Gupta has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sukhwinder Singh, challenging the judgment dated 20.11.2014 passed by learned Judicial Magistrate Ist Class, Patiala, whereby the complaint filed by the applicant was dismissed and accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds pleaded therein. It is further stated that the impugned judgment of acquittal deserves to be set aside. Learned trial Judge, while acquitting the respondent, has acted contrary to law.

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

As per the record, the complainant Suraj Bhan Gupta filed a complaint against Sukhwinder Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, there were friendly relations between the complainant and the accused. The accused with mala fide intention and to play fraud and cheating with the complainant and taking the undue benefit of friendly relations, approached the complainant for friendly loan of ₹90,000/- by stating that the said amount is required by him for some urgent domestic work. ₹90,000/- was paid to Sukhwinder Singh in the month of January 2013. Accused promised to pay back the said amount to complainant after eight months and when the accused was approached, he issued cheque bearing No.190046 dated 03.09.2013 for ₹90,000/- from his account number 10013823051. When the cheque was presented for encashment, it was returned with remarks 'Insufficient Funds'. Legal notice was served and when the amount was not paid, then complaint was filed.

On the basis of the evidence, learned JMJC, Patiala, acquitted the accused-respondent vide impugned judgment dated 20.11.2014.

After going through the impugned judgment, I find that the accused has come with specific plea that loan was raised by him in December 2012 from the complainant and he had repaid the entire amount and further stated that ₹20,000/- was paid through two cheques for an amount of ₹10,000/- each dated 19.01.2013 and 12.04.2013 respectively and remaining amount was paid in cash. The

accused examined DW-1 Paramjit Singh Bhatia, who brought on record, attested copies of encashed cheques Ex.DW1/B and Ex.DW1/C, which transpires that the name/signatures of accused in Punjabi language is visible on cheque Ex.DW1/B and signatures in Punjabi as well as English language appeared on Ex.DW1/C. Learned Court below held that it stands duly proved that an amount of ₹10,000/- was received by the complainant on 12.04.2013 from accused though complainant in his cross-examination has categorically denied the withdrawal of any amount from the account of Sukhwinder Singh. Even if the version of the complainant is believed for the sake of arguments that he did not sign in Punjabi, then he has failed to explain as to how his signatures appeared on cheque in question in English language and how the statement of account duly reflects the amount of ₹10,000/- paid to him vide cheque No.190039 from account of Sukhwinder Singh. The Court further held that pattern/writing styles, handwriting on cheque in question as well as on cheque Marks-1, 3, 5, 7 and 9 are same.

The case of the accused is that he had paid to complainant ₹20,000/- through cheque and remaining amount in cash and thereafter, complainant issued a receipt Mark D-11. Though complainant denied his signatures in Punjabi language but from attested copy of cheque DW1/C and statement of account Ex.DW1/D, it stands established that an amount of ₹10,000/- was withdrawn by complainant vide cheque No.190039.

The Court after discussing the evidence, held that the

complainant had concealed the factum of receipt of part payment. Though accused is not able to prove the repayment of entire amount but the presumption in favour of the complainant is rebuttable and accused is required to raise a probable defence and accused is not to prove his case beyond reasonable doubt. Even if ₹10,000/- is proved to be paid, then it was not necessary for issuing the cheque for payment of amount of ₹90,000/- In the statement under Section 313 Cr.P.C. also, the accused took the plea that undated cheques bearing No.190041 to 190046 were deposited with the complainant. The other cheques were returned but complainant retained cheque bearing No.190046, which was undated and complainant put the date on the cheque and filed the false complaint against him. He also took the plea regarding payment of ₹20,000/- from his saving account bearing No.10013823051 of State Bank of India on 19.01.2013 by submitting cheque No.190035 for ₹10,000/- and another payment of ₹10,000/- was withdrawn by the complainant on 12.04.2013 by filing cheque No.190039 which is clear from the statement of account Ex.DX.

Keeping in view the above findings of learned JMIC, Patiala, I find that the accused has rebutted the presumption under Section 139 of the Negotiable Instruments Act which is in favour of the complainant and the complainant has concealed the facts from the Court regarding part payment.

In view of the above discussion, I find that the findings given by learned JMIC, Patiala are as per evidence. In no way, the

findings can be held as perverse nor there is anything on the record to show as to which material evidence has been misread or which material evidence has not been considered by the Court below. The judgment dated 20.11.2014 passed by learned JMJC, Patiala, 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.

September 21, 2015
Vgulati

(INDERJIT SINGH)
JUDGE