

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-509-MA of 2015 (O&M)
Date of decision: November 03, 2015

Rakesh Kumar

...Applicant

Versus

M/s Gagan Filling Station Malooka and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Parminder Singh-I, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Rakesh Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Gagan Filling Station Malooka and Buta Singh, challenging the judgment dated 8.01.2015 passed by learned Judicial Magistrate Ist Class, Phul Jalandhar, whereby the accused-respondents were 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 learned trial Court has committed a patent error while acquitting the respondents.

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

As per the record, the complainant Rakesh Kumar filed a

complaint against M/s Gagan Filling Station Malooka and Buta Singh under Section 138 read with Section 142 of the Negotiable Instruments Act. As per complainant's version, he has been doing the business at village Kothaguru, District Bathinda. Accused had borrowed ₹6 lacs from the complainant in the month of July 2012 for business of Petrol Pump on interest @ 18% per annum. In order to discharge their liability, accused issued cheque bearing No.301159 dated 10.11.2012 for ₹6 lacs drawn on State Bank of Patiala, Bhagta Bhaika and accused Buta Singh had put his signatures on the same at the time of issuance of cheque. The accused assured the complainant that whenever the cheque would be presented with the banker, the same would be encashed but when the cheque was presented, it was returned back dishonoured.

Learned Magistrate while discussing the evidence held that the complainant has failed to prove that in the month of July 2012, accused borrowed ₹6 lacs on interest @ 18% per annum from the complainant for his business of Petrol Pump. The defence of the accused is that complainant had taken his Petrol Pump on lease and for payment of Petrol Pump, which was required to be done through M/s Gagan Filling Station, the accused handed over his signed cheque to the complainant and the complainant had misused the cheque. In order to prove that he had leased out his Petrol Pump to the complainant, the accused proved on record agreement of lease Ex.D4, which was also admitted by the complainant during his cross-examination that he had taken the Petrol Pump on lease on

03.06.2011 from Buta Singh for the period of two years for ₹3 lac per year. Learned Magistrate held that fact regarding possession of Petrol Pump by the complainant is admitted one which he had taken from 03.06.2011 to 02.06.2013. The Court further held that if the complainant himself was using the Petrol Pump in the month of July 2012, then question of borrowing of loan by the accused does not arise for running that business. The cheque is dated 10.11.2012, which was presented on the same day and the same was dishonoured. The Court held that complainant himself has withheld the best evidence i.e. record of Petrol Pump. The Court also discussed the application dated 09.11.2012 given by the accused for stopping the payment of cheques No.301151, 59, 61, 68, 72, 75, 77, 85 and the cheque in question is of dated 10.11.2012. The Court below held from the evidence that no amount of ₹6 lacs was ever borrowed by the accused as alleged by complainant. The Court further held that no document or paper of transaction has been proved on record by the complainant to prove the fact of loan. Otherwise also, it looks unnatural that when Petrol Pump has been given on lease by written document in the year 2011 for two years, then the amount of ₹6 lacs cannot be given without executing any document. Rather, as per lease deed, ₹6 lacs was to be paid by the complainant to the accused.

In view of the above discussion, I find that the findings given by learned JMIC, Phul are correct and as per law. The evidence has been appreciated in right perspective. No illegality has been

committed. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below. The judgment dated 08.01.2015 passed by learned JMJC, Phul, 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 03, 2015
Vgulati

(INDERJIT SINGH)
JUDGE