

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-788-MA of 2015 (O&M)
Date of decision: November 17, 2015

Uma Dutt

...Applicant

Versus

Naresh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jatinder Pal Singh, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-Uma Dutt filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent Naresh Kumar, challenging the judgment dated 04.03.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby the accused-respondent was 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 if the leave is not granted to file appeal, then the respondent will flee from the Court of justice.

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

As per the record, the complainant Uma Dutt filed a complaint against Naresh Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, for discharging existing liability towards the complainant, the accused had issued a cheque bearing No.864243 dated 15.03.2013 in the sum of ₹2,30,000/- drawn

on Syndicate Bank, Branch Radaur. When the cheque was presented by the complainant to his banker for encashment, the same was dishonoured with the remarks 'Funds Insufficient'. Legal notice was served and when the payment was not paid, then the complaint was filed.

After going through the evidence on record and after hearing learned counsel for the parties, learned JMIC, Yamuna Nagar at Jagadhri, acquitted the accused of the charges framed against him.

From the perusal of the impugned judgment dated 04.03.2015, I find that the Court below has discussed the law laid down in judgment passed by the Hon'ble Supreme Court in case titled as ***Vijay vs. Laxman, 2013(1) RCR (Cr) 1028***, wherein, it has been held that where the complainant alleges that the cheque was issued for repayment of loan and where no document or other material has been brought on record to prove loan transaction and where date of demand of loan and giving of loan is not stated in the complaint, the same is fatal to the case of the complainant and the accused is entitled to acquittal.

In the present case also, the complainant did not disclose in his complaint as to what was the legal liability for which the cheque in question was issued by accused to him and when and how the said legal liability arose against the accused. The complainant in the evidence has stated that he had given friendly loan of ₹2,30,000/- to the accused. However, what were the said friendly relations which prompted the complainant to go to the extent of advancing such a

huge money as friendly loan to the accused, has not been disclosed.

From the record, I find that the evidence has been correctly appreciated in right perspective. Otherwise also, I find that no security document has been taken from the accused at the time of giving of loan. No document has been placed on record to show any entry in the account books or in income tax return. The amount in question has not been shown in the income tax return.

In the facts and circumstances of the present case, the presumption under Section 139 of the Negotiable Instruments Act has been rebutted. Furthermore, the case of the accused is that he had taken ₹40,000/- from the complainant, which he has already returned back to the complainant in September 2012. In no way, this defence of the accused can be treated as admission in the present case. Nowhere the accused has admitted the present transaction of ₹2,30,000/-. Nothing has been pointed out as to which material evidence has not been considered and which material evidence has been misread by the Court below.

In view of the above discussion, I find that the judgment dated 04.03.2015 passed by learned JMJC, Yamuna Nagar at Jagadhri, is correct, as per law and evidence and does not require any interference from this Court.

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 17, 2015

Vgulati

**(INDERJIT SINGH)
JUDGE**