

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-88-MA of 2014 (O&M)
Date of decision: October 06, 2015

Subhash Chander

...Applicant

Versus

Richhpal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jaswant Jain, Advocate
for the applicant.

Mr.B.R.Vohra, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Subhash Chander has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Richhpal, challenging the judgment dated 18.11.2013 passed by learned Judicial Magistrate Ist Class, Hisar, whereby complaint under Section 138 of the Negotiable Instruments Act was dismissed and 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 vide impugned judgment dated 18.11.2013, learned JMJC, Hisar acquitted the accused-respondent of the charges levelled against him.

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

As per the record, the complainant Subhash Chander filed a complaint against Richhpal under Sections 138 and 141 of the Negotiable Instruments Act. As per complainant's version, one Usha Devi widow of Mohan Lal, had entered into an agreement with the complainant to sell the agricultural land owned by her and her daughters on 05.02.2008. Complainant paid an amount of ₹15 lacs to Usha Devi as earnest money. On 10.06.2008, the land in question was desired to be purchased by accused-respondent from Usha Devi and he offered to refund the earnest money to the complainant, to which the complainant agreed and accused paid an amount of ₹11.5 lacs in cash and balance money of ₹3.5 lacs by way of cheque bearing No.205932 dated 10.06.2008, for discharging an existing outstanding and legally enforceable liability, in favour of the complainant. Thereafter, accused got the agricultural land in question transferred in favour of his wife vide registered sale deed No.518 dated 10.06.2008. On presentation of the cheque, it was dishonoured with the remarks 'refer to drawer/account blocked'. When the amount was not paid, then complaint was filed.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondent.

First of all, nothing has been pointed out as to how the findings given by learned JMIC, Hisar in judgment dated 18.11.2013 are against the law or perverse. Nothing has been pointed out as to

which material evidence has not been considered in right perspective or which evidence has not been considered by the Court below. As per the averments in the complaint, it is clear that accused Richhpal has not issued the cheque to the complainant for discharging any pre-existing liability. The amount of ₹15 lacs, as per the complaint, were paid by the complainant to one Usha Devi. No amount has been paid by the complainant to the present accused-respondent. It is admitted that the sale deed was in favour of wife of the present accused-respondent. It is admitted at the time of arguments that in the sale deed, there is no such averment that out of total sale consideration, ₹15 lacs was to be paid to the present complainant. There is no other document or agreement to pay ₹15 lacs to the present complainant.

The accused-respondent has not issued the cheque for discharge of pre-existing liability. There was no privity of contract between the complainant and the accused. Otherwise also, the sale deed is also not in favour of the accused, rather it is in favour of wife of the accused. There is no cogent evidence on record that accused-respondent Richhpal has issued the cheque in discharge of any pre-existing liability. Therefore, one of the ingredient under Section 138 of the Negotiable Instruments Act is missing and learned JMIC, Hisar has correctly acquitted the accused-respondent.

In view of the above discussion, I find that the findings given by learned JMIC, Hisar, are as per evidence. In no way, the findings can be held as perverse. The judgment dated 18.11.2013 passed by learned JMIC, Hisar, 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.

October 06, 2015
Vgulati

(INDERJIT SINGH)
JUDGE