IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-936-MA of 2015 (O&M)
Date of decision: September 28, 2015

Surinder Bansal

...Applicant

Versus

Jai Pal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

****

INDERJIT SINGH, J.

Applicant-Surinder Bansal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Jai Pal, challenging the judgment dated 21.04.2015 passed by learned Judicial Magistrate Ist Class, Ambala, 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 complainant lend friendly loan of ₹50,000/- to the accused and cheque was issued by the accused in discharge of above-said enforceable liability. The accused has been acquitted by learned trial Court by saying that presumption under Section 118 and 139 of the Negotiable Instruments Act, 1992, stands rebutted on surmises and conjectures.

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

As per the record, the complainant Surinder Bansal filed a complaint against Jai Pal under Section 138 of the Negotiable Instruments Act. As per complainant's version, he is a Government employee and accused is known to him as having friendly and close relations with each other. On 09.04.2013, accused requested the complainant to give him ₹50,000/- and it was promised by the accused to return the money. The complainant withdrawn ₹50,000/- from his bank and paid to the accused. After the lapse of two months, the complainant asked the accused to return his money but the accused showed his inability and asked the complainant to wait for some more time. Later on, accused issued a cheque bearing No.226620 dated 15.06.2013 for ₹50,000/- drawn at State Bank of Patiala, Panchkula, which on presentation, was dishonoured for 'insufficient funds'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

On the basis of the evidence, learned JMIC, Ambala, acquitted the accused-respondent vide impugned judgment dated 21.04.2015.

After going through the record, especially the impugned judgment, I find that the findings have been given by learned Court below by correctly appreciating the evidence. Nothing has been pointed out as to how the findings given by learned Magistrate are perverse. Nothing has been pointed as to which material evidence has not been considered and which material evidence has not been appreciated in right perspective. During cross-examination, CW-1 Surinder Bansal, complainant deposed that he has 5-6 cases pending in the Court and he does not have any money lending licence. He further stated that he used to help the people by lending an interest free loan. He further admitted that he had three cases under Section 138 of the Negotiable Instruments Act against the accused, which were compromised and money was repaid to him. He also admitted that in the previous case, he had given the statement that he does not have the cheques of accused bearing No.226607 to 226626 and the cheque in question is one out of these numbers. During cross-examination, the accused has taken the defence that he has neither borrowed any loan from the accused nor issued the cheque in question in favour of the complainant rather his blank signed security cheque in question is misused. The Court held that when in the earlier case the complainant admitted that he has no cheques bearing No.226607 to 226626, then how he filed the complaint by mentioning cheque No.226620 dated 15.06.2013. The Court believed the defence version that cheques were given to the accused as security. Otherwise also, the complainant is a Government employee and he cannot give loan to various persons in violation of service rules. Nothing is there that complainant is giving loan on interest etc. after taking permission from his office.

Furthermore, if the accused had not repaid the amount to the complainant in earlier cases and complainant has filed the complaints, then, why he would give loan again to the accused. The Court has correctly appreciated the evidence and discussed the law on the point and has correctly reached to the conclusion that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. The complainant has not led evidence to show the legally enforceable liability of the accused. No document has been got executed while lending the amount. The Court also held that complainant is giving loan to so many persons, which shows that he is dealing in the business of finance and transactions are commercial in nature. The Court held that the version of the complainant is improbable.

In view of the above discussion, I find that the findings given by learned JMIC, Ambala, are as per evidence. In no way, the findings can be held as perverse. The judgment dated 21.04.2015 passed by learned JMIC, Ambala, 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 28, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**