

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-132-MA of 2011 (O&M)
Date of decision: February 25, 2016

Charanjit Bhola

...Applicant

Versus

Suresh Jain

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravi Kapur, Advocate
for the applicant.

Mr.A.S.Sullar, Advocate
for the respondent.

INDERJIT SINGH, J.

CRM No.5861 of 2011

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 12 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-132-MA of 2011

Applicant-Charanjit Bhola has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Suresh Jain, challenging the impugned judgment dated 31.07.2010 passed by learned Judicial Magistrate Ist Class, Ambala Cantt., 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 impugned judgment is based on incorrect appreciation of evidence brought on record, legal proposition of law involved therein. It is, therefore, prayed that leave to file appeal be granted.

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

As per the record, the complainant Charanjit Bhola filed a complaint against accused Suresh Jain under Section 138 of the Negotiable Instruments Act, 1881. As per complainant's version, accused is carrying on business of jewellery under the name and style of M/s Jain Jewellers. Accused being known to the complainant requested him for a friendly loan of ₹1.5 lacs for the partnership firm with a promise to return the same. The accused on 04.10.2006 issued two cheques for an amount of ₹75,000/- each in favour of the complainant, which on presentation for encashment, were dishonoured. Legal notice was served upon the accused. After receipt of the notice, accused requested the complainant not to file the complain as he is facing financial problems and issued a post dated cheque for ₹1 lac towards part payment, which on presentation for encashment, was returned back with the remarks 'Account closed'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

Learned JMIC, Ambala Cantt., after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 31.07.2010.

Learned Magistrate held that complainant has failed to mention the date of advancement of alleged loan to the complainant either in his complaint or legal notice or in his deposition and in the absence of the same, it cannot be said that the accused was under obligation to pay legally enforceable debt and that the cheque in question was issued by him in discharge of legally enforceable debt of the complainant. The Court below further held that this is a serious lapse on the part of the complainant.

Furthermore, no documentary evidence has been produced by the complainant to show advancement of loan in question. No security documents were taken from the accused at the time of advancement of loan. It is also held that there is no record on the file of any type to show these transactions. The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused from the evidence of the complainant itself.

Further, learned Magistrate held that one of the necessary ingredient of Section 138 of the Negotiable Instruments Act is missing as the cheques have been issued from account No.341 and this account does not belong to the accused, rather to some other person, which means that the cheques have not been issued by the accused from his account, which is necessary ingredient under Section 138 of the Negotiable Instruments Act.

The Court below also held that complainant failed to place on record any document regarding his source of income. No writing has been executed at the time of advancing the loan.

At the time of arguments, nothing has been argued as to how the findings given by the Court below are perverse or against the law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court.

In view of the above discussion, I find that the findings given by learned JMIC, Ambala Cantt., are correct, as per evidence and law. In no way, the findings given by learned Court below, can be held as perverse. The impugned judgment dated 31.07.2010 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.

February 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE