

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM No.A-416-MA of 2011 (O&M)****Date of decision: May 03, 2016**

Parkash Saini

...Applicant

Versus

Bhupinder Singh Jolly

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jasdeep Singh Gill, Advocate
for the applicant.

Mr.Ramneek Vasudeva, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Parkash Saini has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhupinder Singh Jolly, challenging the impugned judgment dated 15.12.2010 passed by learned Judicial Magistrate Ist Class, Rupnagar, whereby the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is also stated in the application that the judgment passed by learned JMJC, Rupnagar is totally based upon conjecture and surmises, whereas the positive evidence brought on record against the accused-respondent has been totally brushed aside causing a

severe miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued and learned counsel for the respondent appeared and contested the application.

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

As per the record, the complainant Parkash Saini filed a complaint against accused Bhupinder Singh Jolly under Section 138 of The Negotiable Instruments Act. As per complainant's version, accused Bhupinder Singh Jolly was in the business of sending people abroad through visitor Visa/Student Visa/Immigration Service etc. The accused approached the complainant in the first week of January, 2006 to send him to Italy on a Visitor Visa and in lieu of that, accused demanded ₹5,00,000/- from the complainant and the same was received by the accused from the complainant in the presence of S. Harbans Singh in four installments in cash i.e. ₹2,85,000/- on 16.01.2006, ₹77,000/- on 24.02.2006, ₹50,000/- on 10.05.2006, ₹88,000/- on 28.06.2006, total ₹5,00,000/-. The accused also issued photostat copies of his Election Commission Identity Card and Permanent Account No. and identity card to the complainant. The accused also received the original passport of the complainant along with his original education certificate, proof of residence and assured the complainant to send him to Italy on a Visitor Visa in the last week of July, 2006 by all means in the presence of S. Harbans Singh. The complainant approached the accused in the third week of July, 2006

to verify the status of his case but the complainant was shocked to see that even after receiving ₹5 lacs from the complainant, the accused failed to satisfy him and started telling stories to him. In the first week of August 2006, the complainant again approached the accused to verify the status but accused showed his inability to send the complainant to Italy and issued cheque bearing No.160026008/207609 for ₹5 lacs dated 25.08.2006 in favour of the complainant and assured that the said cheque shall be encashed by all means but on presentation of the said cheque for encashment, it was returned back unpaid with the remarks 'funds insufficient'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

After the evidence produced by the complainant, statement of accused was recorded under Section 313 Cr.P.C., in which he stated that he had never received payment from the complainant. Neither he knew the complainant nor his father Harbans Singh. He has also denied that he had ever met the complainant. He has stated that he was working as an employee with the office which used to send the persons for permanent immigration to Canada, Australia, New Zealand and USA and that office did not use to send the persons for visitors Visa. He has stated that permanent immigration to Italy was not allowed as per law. He has also stated that the complainant had never met him in the office and he had not received any documents or passport from the complainant. He has stated that he was not at Chandigarh but was at Bhubneshwar in

connection with some official, work, when the complainant as alleged had paid ₹5 lacs to the accused on 10.05.2006. The accused has further stated that the complainant neither approached him on 25.08.2006 nor he issued him cheque No.207609, rather the cheque in question was issued in the period of 19.01.2002 to 01.02.2002 for the purpose of security of a loan of ₹50,000/- which was taken from Manjit Kaur. His bank account was also closed in the year 2005 and after the issuance of cheque in question No.207609, in the year 2002, he had got received many cheque books of the said account from the U.B.I. Mohali. The accused also examined himself as DW-1 and deposed the same facts. He further examined DW-2 Kranti K. Sharma, DW-2 Manjit Kaur, DW-4 Gurinder Singh Kahlon and DW-5 Kuldeep Singh Randhawa.

Learned JMIC, Rupnagar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 15.12.2010.

I have gone through the judgment dated 15.12.2010 passed by learned JMIC, Rupnagar. I find that that the findings given by learned Magistrate are correct, as per evidence and law. In no way, the findings can be held as perverse i.e. against the evidence and 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 below.

Learned Magistrate, after appreciating the evidence held that from the cross-examination of Manjit Kaur, it has become clear

that there was some dealing between Bhupinder Singh Jolly accused and Manjit Kaur through Hira Singh Saini. The accused tried his best to get Hira Singh Saini examined but Hira Singh Saini had gone to Canada. The Court further held that on the cheque, word 19 has been printed and it is clear that the cheque book printed before the year 2000, whereas the cheque is stated to be issued on 25.08.2006. The cheque books printed in the year 1999 cannot be issued even after seven years. The complainant failed to prove his capacity. He stated that he has arranged the amount from his grandmother, relatives and friends but these facts are not mentioned in the complaint.

Furthermore, the complainant stated that the amount was paid in the presence of Harbans Singh, who is his father but he also did not appear in the Court. The accused at the time of advancing loan of ₹5 lacs has not obtained any receipt or any other security document, which also creates doubt regarding his version.

From the evidence on record, it looks that the probable defence raised by the accused has been duly supported and corroborated from the cross-examination of the complainant as well as from the defence evidence. There is no document on record to show any loan transaction between the complainant and the accused. The complainant has also not proved his capacity to give such a big loan. If the accused has collected the money from his grandmother and relatives, then why he has given such a huge amount to the accused without obtaining any security document/receipt. It is also in the evidence that after issuance of the cheque in question, so many

cheque books have also been issued in favour of the accused. The accused has already closed his bank account in the year 2005. The defence of the accused is that the cheque in question was issued in the period of 19.01.2002 to 01.02.2002 for the purpose of security of a loan of ₹50,000/- which was taken from Manjit Kaur. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

In view of the above discussion, I find that the findings have been given by learned JMIC, Rupnagar, while appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence and law. The impugned judgment dated 15.12.2010 passed by learned JMIC, Rupnagar, 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.

May 03, 2016
Vgulati

(INDERJIT SINGH)
JUDGE