IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1049-MA of 2013 (O&M)
Date of decision: January 25, 2016

Vikas

...Applicant

Versus

Mukesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Surinder Dagar, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Vikas has filed this application [being legal heir of Phool Singh, complainant (now deceased)] under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mukesh Kumar, challenging the judgment dated 20.09.2013 passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby accused-respondent was acquitted of the charges.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that learned trial Court acquitted the respondent without going through the facts of the case and law applicable to the present case and without considering the evidence. The order of acquittal is based upon conjectures and surmises and hence is liable to be set aside. It is, therefore, prayed that leave to file the appeal be granted.

As per the record, the complainant Phool Singh filed a complaint against accused Mukesh Kumar under Sections 138/142 of the Negotiable Instruments Act, 1881. As per complainant's version, the accused approached complainant and took a friendly loan of ₹4,80,000/- in March 2012 for his domestic and business purposes. In discharge of his legal liability, the accused had issued cheque bearing No.342503 dated 01.10.2012 amounting to ₹4,80,000/-, which on presentation for encashment, was dishonoured with the remarks 'Drawers signature differs'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

The complainant examined himself as CW-1 and in cross-examination he denied that he has given only ₹3,60,000/- to accused and accused has repaid ₹4,08,000/- in lieu of that loan. He also denied that he received the cheque as blank signed from accused.

The accused examined in defence one Laxmi Kant Sirivastva, who appeared as DW-1 and tendered into evidence the income tax return of the accused for the year 2012-13 and profit and loss account and balance sheet of M/s Lohia Chicken Corner as on 31.03.2012 Ex.R3 and R4. DW-2 Manoj Jalal, tendered into evidence documents Ex.R7 to R22.

Learned JMIC, Gurgaon, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 20.09.2013.

I have heard learned counsel for the applicant and have gone through the record, especially the impugned judgment.

From the record, I find that learned court below held that to rebut the presumption under Section 139 of the Negotiable Instruments Act, the main plea of defence is that accused has already paid ₹4,08,000/- to the complainant in lieu of ₹3,60,000/- i.e. original loan along with interest. To prove his version, the accused relied upon the documents Ex.R1 to Ex.R33 and witness DW-1 has tendered statement of profit and loss account and balance sheet of M/s Lohia Chicken corner-accused firm. The Court held that on perusal of Ex.R3, it is revealed that accused as shown ₹68,000/- as interest paid in this statement on 31.03.2012. Ex.R4 balance sheet of accused firm on 31.03.2013 shows ₹3,60,000/- as un-secured loan from Phool Singh. Ex.R5 ledger account of accused firm shows payment of interest to complainant. Learned Magistrate held that a collective reading of Ex.R1 to R6 shows that accused has taken loan of ₹3,60,000/- from complainant and accused has paid interest on this amount. Further, the accused has given reply Ex.R17 to the legal notice of the complainant via speed post and similar plea has been taken. Similar defence has been taken in the application under Order 39 Rule 1 and 2 filed by accused in the Court of learned JMIC, Gurgaon. The Court below further held that accused has taken diligently his defence at every stage..

On the other hand, the complainant has not produced any documentary evidence to prove the advancement of loan. No date has been mentioned in the complaint as to when the loan was given. No particulars have been mentioned regarding the advancement of loan. CW-1 complainant stated that he does not remember the date as to when the loan was given. He also stated that at that time, no agreement was signed. He further stated that there was no condition for the interest nor he has taken any interest. The complainant further stated that promissory note was also not got signed and also stated that the amount was paid in cash. The complainant also not produced the income tax return record. He further stated that he does not maintain the account books.

Keeping in view the facts and circumstances of the present case, I find that the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. The accused has raised probable defence. DW-1 and documents produced in defence have duly supported and corroborated the defence version. In no way, the the findings given by learned Court below can be held as 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 below.

In view of the above discussion, I find that findings given by learned JMIC, Gurgaon, in no way, can be held as perverse. The impugned judgment dated 20.09.2013 passed by learned JMIC, Gurgaon, 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.

January 25, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**