

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-383-MA of 2013 (O&M)
Date of decision: February 02, 2016

Surender Kumar

...Applicant

Versus

Sukhwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Budhwar, Advocate
for the applicant.

Mr.Sanjiv Gupta, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Surender Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sukhwinder Singh, challenging the impugned judgment dated 27.04.2012 passed by learned Special Judicial Magistrate, Kurukshetra, 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 learned Special Judicial Magistrate has dismissed the complaint without appreciating the facts, evidence and other documents proved on the record. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued. 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 Surender Kumar filed a complaint against accused Sukhwinder Singh under Sections 138 and 142 of the Negotiable Instruments Act, 1881. As per complainant's version, accused had borrowed a sum of ₹90,000/- and issued cheque bearing No.732406 dated 22.10.2008 for a sum of ₹90,000/- in favour of the complainant, which on presentation for encashment was dishonoured with the remarks 'fund insufficient. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

Learned Special Judicial Magistrate, Kurukshetra, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 27.04.2012.

From the record, I find that the accused has admitted his signatures on the cheque Ex.C1 but his defence was that this cheque was given as blank signed cheque in the year 2008 because the complainant, accused and few other persons were members of a committee and while the member of the committee, accused had given the cheque Ex.C1.

The perusal of the record shows that no date, month and year of borrowing the amount by the accused has been mentioned in the complaint. No particulars of any type has been given as to from

where this amount was withdrawn, with which mode it was paid to the accused and at which place the amount was given. There is also nothing that in whose presence the amount was given. No security document was got executed at the time of giving the loan. No account books of any type has been produced. The total amount is ₹90,000/- and it cannot be given in cash because as per Section 269 ss of the Income Tax Act; Any amount more than ₹20,000/- should be given through cheque only.

The perusal of the record shows that the probable defence raised by the accused has rebutted the presumption under Section 139 of the Negotiable Instruments Act. The fact that different inks were used while filling the cheque, supports the version of the accused that the cheque was given as blank signed cheque. Nothing is there to show the capacity of the complainant to pay the amount in question. No security document, no particulars of loan and no mention as to when the loan was demanded, all these rebut the presumption. Nothing has been argued as to how the findings given by learned Court below are perverse. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

In view of the above discussion, I find that the findings given by learned Court below, in no way, can be held as perverse. The impugned judgment dated 27.04.2012 passed by learned Special Judicial Magistrate, Kurukshetra, 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 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE