

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-429-MA of 2013 (O&M)

Date of decision: May 11, 2016

Anil Kumar Jain

...Applicant

Versus

M.L.Arora and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gaurav Chopra, Advocate
for the applicant.

Mr.N.S.Shekawat, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Anil Kumar Jain has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M.L.Arora and Neelam Arora, challenging the impugned judgment dated 28.02.2012 passed by learned Judicial Magistrate Ist Class, Panchkula.

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 that respondents have been illegally and arbitrarily acquitted by the trial Court. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued and learned counsel for the

respondents 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 Anil Kumar Jain filed a complaint against accused M.L.Arora and Neelam Arora under Section 138 of the Negotiable Instruments Act read with Section 420 IPC. As per complainant's version, he advanced friendly loan of ₹20 lacs to accused persons and in discharge of their liability, accused issued account payee cheque bearing No.825577 dated 08.11.2006 for ₹20 lacs, which on presentation for encashment was returned back dishonoured with the remarks 'insufficient funds'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed well within time.

The complainant examined himself as CW-1 and closed the evidence. The accused were examined under Section 313 Cr.P.C. and confronted with the evidence. Accused denied the correctness of the evidence and pleaded themselves as innocent. In defence, accused examined DW-1 Kuldeep Singh, who filed affidavit Ex.DW1/1 to the effect that he has brought the summoned record. Manohar Lal Arora is having saving bank account with their branch. He also brought the certified/attested copy of statement of account. There is cash withdrawal entry of ₹10 lacs in two transactions of ₹5 lacs each from the said account on 19.12.2005. DW-2 Sonika, Ahlmad, brought the summoned record of file titled as 'Anil Jain vs. M.L.Arora' under Section 138 of the NI Act in respect of cheque bearing No.155910

dated 12.05.2007 for ₹42 lacs. DW-3 Davinder Parshad, Document Expert, has compared the questioned signature marked Q1 of complainant on original receipt dated 19.12.2005, present in the case file titled as 'Anil Jain vs. M.L.Arora' with the standard signature marked A1 to A9 of complainant. He gave his opinion that the person who wrote standard signatures marked A1 to A9 also wrote the questioned signature marked Q1. He tendered his report Ex.DW3/1 along with photochart Ex.DW3/13 to Ex.DW3/23 and negatives. DW-4 Raj Pal deposed that on 19.12.2005, he went to the office of Manohar Lal Arora at about 5.30 p.m. Jagjit Singh, M.L.Arora and two more persons were sitting there. While he was talking with Manohar Lal Arora in connection with some property, Anil Jain came there and demanded his payment. Mr.Arora told him that he had already withdrawn the amount from his bank account. Thereafter, Manohar Lal Arora paid him ₹8 lacs and demanded his two blank security cheques and requested for cancellation of sale deed in the name of Poonam Jain wife of Anil Jain. Anil Jain told him to take a receipt from him mentioning all the facts and that two blank security cheques and other documents shall be deemed as cancelled. He also assured to return the blank cheques and documents within 3-4 days. Thereafter, a receipt of full and final payment was prepared and typed in the said office, which is Mark D1. Anil Jain put his signature and thereafter, he and Jagjit Singh signed the receipt. This witness identified his signatures as well as signatures of Anil Jain and Jagjit Singh, which is Ex.DW4/2.

Learned Magistrate after appreciating the evidence in right perspective held that accused has raised plea that accused borrowed ₹5 lacs from complainant and issued two blank cheques as security in lieu of the money borrowed by them. They had repaid the loan amount along with interest. Receipt Ex.DW4/2 dated 19.12.2005 was executed by complainant in this regard. On the other hand, complainant denied his signatures on the receipt but DW-4 attesting witness has proved the execution of receipt. DW-3 Davender Parshad, Handwriting Expert has also proved signature of complainant on receipt. The Court further held that this receipt clearly shows that complainant has received sum of ₹8 lacs from accused persons on account of ₹5 lacs advanced to them towards loan and ₹3 lacs towards interest. It is also stated that complainant also undertook to return the complete file containing the signed papers, two blank signed security cheques No.155910 and 825577. The sale deed dated 12.05.2005 in the name of Poonam Jain as security was also cancelled. Learned Magistrate further held that this receipt has falsified the complainant's case.

Furthermore, from the record, I find that there are no particulars to show that on which date, in which month and year, the loan of ₹20 lacs was given to accused. There is no document on record to prove the loan transaction. There is no income tax return. Nothing is there as to in whose presence the amount has been given. There is nothing to show that from which account this amount has been withdrawn. All these facts support and corroborate the defence

raised by the accused. To rebut the presumption under Section 139 of the Negotiable Instruments Act, the defence raised by the accused should be probable and supported and corroborated from the evidence on record i.e. from the cross-examination of the complainant and complainant's evidence or from the defence evidence etc. In the present case, the defence raised by the accused is duly supported from the complainant's as well as defence evidence.

Learned JMIC, Panchkula has appreciated the evidence in right perspective. 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.

In view of the above discussion, I find that the impugned judgment dated 28.02.2012 passed by learned JMIC, Panchkula, 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 for grant of leave to appeal and therefore, the present application stands dismissed.

May 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE