

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-491-MA of 2013(O&M)
Date of decision: January 15, 2016

Surinder Kumar

...Applicant

Versus

Manoj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Yashpal, Advocate
for the applicant.

Mr.R.S.Budhwar, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Surinder Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Manoj Kumar, challenging the judgment dated 17.09.2012 passed by learned Special Judicial Magistrate, Kurukshetra, 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. Learned Special Judicial Magistrate, Kurukshetra has acquitted the respondent from the liability of the offence under Sections 138 and 142 of the Negotiable Instruments Act. It is, therefore, prayed that leave to file the appeal be granted.

As per the record, the complainant Surinder Kumar filed a complaint against accused Manoj Kumar under Section 138/142 of the Negotiable Instruments Act. As per complainant's version, the accused had borrowed a sum of ₹2 lacs from the complainant as he was intending to go abroad and in lieu of discharge of his lawful liability, the accused issued cheque No.767343 dated 08.09.2010 drawn at State Bank of India, Ladwa for a sum of ₹2 lacs in favour of the complainant. On presentation of the cheque for encashment, it was dishonoured with the remarks 'funds insufficient'. The complainant again presented the cheque for encashment and again it was dishonoured with the remarks 'funds insufficient'. Legal notice was served upon the accused. When the payment was not made, then the complaint was filed.

After completion of evidence produced by the complainant, the statement of accused was recorded under Section 313 Cr.P.C., in which he denied the allegations and claimed himself to be innocent and stated that he has no dealing with the complainant and nothing is due against him. He further pleaded that one Harpal Singh, who is complainant's relative, has already entered into a compromise with him vide order dated 30.10.2010 but now the complainant has misused the disputed cheque on saying of Harpal Singh. To prove his case, the accused examined DW-1 Sukhdev Singh.

Learned Special Judicial Magistrate, Kurukshetra, after appreciating the evidence, acquitted the accused-respondent.

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 and especially gone through the impugned judgment dated 17.09.2012.

First of all, I find that nothing has been pointed out as to which material evidence has not been considered or which material evidence has been misread by the Court below. Nothing has been argued as to how the findings given by the Court below are perverse or against the evidence and law. The perusal of the complaint itself shows that no particulars have been mentioned as to when the accused borrowed sum of ₹2 lacs from the complainant. No date, month and year has been mentioned. Nothing has been mentioned in whose presence and at which place the loan was given. There is also nothing as to what was the mode of payment of loan, whether it was by cash or by way of cheque etc. Secondly, the perusal of the impugned judgment shows that there is nothing on the record to show any documentary evidence to support the version of the complainant that the loan of ₹2 lacs was advanced to the accused. The accused has not admitted the fact of borrowing of loan nor his signatures were admitted. During cross-examination, the complainant admitted that one Harpal Singh was present and he was sitting outside the Court when the evidence was being recorded on 21.04.2012. Accused produced cheque No.767342 which was given to Harpal Singh and that was given on 16.02.2002 regarding which, Harpal Singh filed the complaint against Manoj Kumar. In the above-said case, Harpal

Singh has made a statement Ex.D2 in that complaint which was for ₹90,000/-, in which the payment was made to the complainant by the accused and the complaint was withdrawn by said Harpal Singh. In the statement, Harpal Singh stated that there is no cheque No.767343 with him. As per the defence evidence, the said cheque was given to the present complainant by Harpal Singh. If in the Court present accused Manoj Kumar asked Harpal Singh i.e. complainant of another case regarding the cheque No.767343 and that Harpal Singh stated that this cheque was not with him, then how the said cheque was stated to be issued on 08.09.2010. The earlier complaint was filed by Harpal Singh in the year 2002 (though in the judgment it was written that complaint has been filed on 22.11.2007 inadvertently). Another cheque No.767349 of that series was also issued on 16.02.2002 to one Sukhdev Singh, from whom the accused had borrowed money and he paid the money and brought Sukhdev Singh in defence as DW-1 to prove all these facts.

The accused has rebutted the presumption under Section 139 of the Negotiable Instruments Act in favour of the complainant.

In view of the above discussion, I find that the findings given by learned Magistrate, are as per evidence. In no way, the findings can be held as perverse. The judgment dated 17.09.2012 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.

January 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE