

MAMTA MALHOTRA
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Misc.No.A-507-MA of 2013(O&M)

Date of decision: 16th May, 2016

Hemant Kumar

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. N.V.S.Kohli, Advocate,
for the applicant.

Mr. Vikramjit Singh, Addl. A.G., Haryana,
for the respondent(s)-State.

Mr. R.K.Rana, Advocate,
for respondent No.2.

INDERJIT SINGH, J.

Applicant Hemant Kumar has preferred the instant application under Section 378 (4) Cr.P.C., for grant of leave to file an appeal against the impugned judgment dated 03.05.2013, passed by the learned Judicial Magistrate Ist Class, Ambala.

It is stated in the application that accompanying appeal has been filed which is likely to succeed. It is also held that respondent No.2-accused has been acquitted by the learned trial Court even despite the evidence against him, which is available on record, and it has caused immense injustice to the applicant. It is prayed that leave to file an appeal be granted.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the instant application.

Brief facts of the case are that applicant-complainant filed a complaint against respondent No.2-accused Smt.Shanta Kumari Sikand

under Section 138 of the Negotiable Instruments Act, 1881. It is mainly stated in the complaint that accused was the owner of House No.189, Model Town, Ambala City. She agreed to sell her house to complainant. The accused were having malafide intention and in order to cheat and grab the valuable amount of complainant, she herself did not sign any document of agreement but she authorized her nephew/relative Vinay Kumar Sikand. After hatching a conspiracy with her nephew Vinay Kumar Sikand, she took Rs.13,50,000/- from the complainant on different dates. Accused and her relative/nephew in connivance with each other did not turn up before the Sub Registrar, Ambala for execution of agreement in question. After that, the complainant approached accused and her relative Vinay Kumar Sikand to do the needful. Lateron, the accused sold the said house to one Jagmohan Lamba. The complainant demanded back his money. Accused and her said relative issued two cheques of different amounts and assured that the same will be encashed but both the cheques were dishonoured. Thereafter, the accused approached the complainant and gave him a cheque bearing No.349539 dated 10.11.2009 for an amount of Rs.13,50,000/- i.e. cheque in question which on presentation for encashment returned back with remarks 'insufficient funds'. Legal notice was issued. When the amount was not paid, the complaint was filed.

Learned Judicial Magistrate Ist Class, Ambala, vide impugned judgment dated 03.05.2013, acquitted the accused-respondent No.2.

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

The findings by the magistrate are given as per evidence and law. In no way it can be held that the findings are perverse or against the

evidence. The evidence has been appreciated in the right perspective. Nothing has been pointed out at the time of arguments as to which material evidence has been misread and as to which material evidence has not been considered by the learned trial Court. From the evidence, this Court finds that the agreement to sell was executed by Vinay Kumar Sikand, the nephew of the accused, but he was not having any authority or power of attorney with him to execute the agreement with the complainant. Admittedly, the accused is owner of the house but she has not signed the agreement to sell. Therefore, the execution of the agreement to sell, in no way, can be held as executed at the instance of accused. The complainant paid Rs.13,50,000/- to Vinay Kumar Sikand, nephew of the accused and he has not paid any money directly to the accused. Vinay Kumar Sikand has issued the cheques for repayment which, at the time of arguments, have been stated to be dishonoured and for those cheques, Vinay Kumar Sikant has already been convicted. The perusal of the record shows that there was no existing liability against the accused qua the complainant in any way. If any money is paid i.e. paid to nephew of the accused and not to the accused. Therefore, the learned trial Court has rightly acquitted the accused. Therefore, the learned trial Court held that the cheque in question was not issued in discharge of legal enforceable debt. The learned trial Court further held that in the present case, agreement to sell has not been proved/produced on the file which is the basis of the complaint. The defence of the accused is that cheque inquestion has been taken in blank under the police pressure and FIR was lodged against her and the cheque in question was filled up by the brother of the complainant. The learned trial Court further held that undoubtedly the cheque inquestion has been filled up in different hand

writing. The defence version raised by the accused is probable and is duly supported and corroborated from the evidence of the complainant etc. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. The findings returned by the learned trial Court are correct and as per evidence and do not require any interference by this Court.

Therefore, finding no ground to grant leave to file an appeal, the instant application is dismissed.

25th February, 2016
mamta

(INDERJIT SINGH)
JUDGE