IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1295-MA of 2016 (O&M)
Date of decision: August 19, 2016

Nirmal Singh

...Applicant

Versus

Usha Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Mehndiratta, Advocate for the applicant.

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INDERJIT SINGH, J.

Applicant-Nirmal Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Usha Devi, challenging the impugned judgment dated 07.06.2016 passed by learned Sub Divisional Judicial Magistrate, Bilaspur, Yamuna Nagar, vide which the accused-respondent was acquitted.

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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Nirmal Singh filed a complaint against accused Usha Devi under Section 138 of the Negotiable Instruments Act. As per complainant's version, there were cordial relations and visiting terms between him, accused and husband of the accused. The accused along with her husband was running a finance company under the name and style of R.K.M. Firm Investments at Bilaspur and were doing the business of lending money to the people by charging interest thereon. Accused and her husband took money from the complainant on various occasions and every time they assured the complainant that the money shall be returned/refunded. In December 2012, husband of the accused died and after the death of her husband, the accused is fully responsible for all the working of the finance company. The complainant approached the accused and asked to return the money and in discharge of her legal liability, the accused issued cheque No.157981 dated 25.01.2013 for an amount of ₹15 lacs in favour of the complainant, which on presentation for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was issued. When the payment was not made, then the complaint was filed within time.

Learned SDJM, Bilaspur, after appreciating the evidence on record acquitted the accused-respondent.

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

From the perusal of the record, especially the impugned judgment, I find that the findings given by learned SDJM, Bilaspur are correct, as per evidence and law. In no way, the findings can be held as 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. Nothing has been pointed out as to how the findings given by learned Court below are illegal.

The perusal of the record itself shows that no particulars i.e. date, month and year have been mentioned as to when the loan was given or on which date, how much amount was given. There is no document on the record to show any of the transaction. No security document was taken from the accused at the time of advancing the loan. No income tax return has been placed on the record nor the rough notes keeping the account in any copy etc. has been produced on the record to show the transaction. Rather, at the time of cross-examination, the complainant could not tell the date, month and year as to when the loan was advanced. In para No.3 of the complaint, it has been mentioned by the complainant that accused and her husband had took money from the complainant on various occasions for so many years. The averments in the complaint qua lending of the amount are totally vague and not supported by any other cogent evidence. In cross-examination, the complainant stated that he does not know the exact date when the amount was advanced to the accused. Otherwise also, it is stated that accused along with her husband was running a finance company at Bilaspur and were doing the business of lending money by charging interest. The firm has not been made a party nor there is any evidence that present accused was partner in that firm. Furthermore, it looks improbable that complainant would advance money without charging any interest specially when the accused are running a finance company and charging interest from the people. ₹15 lacs is not a small amount and no document of any type has been produced. There is no date as to when the amount was demanded back. There is no document to show whether the firm was a sole proprietor firm or whether it was partnership firm or accused is concerned with the firm. Even if it is taken that accused had taken the control of the firm after the death of her husband, even then, the accused has no liability to pay the amount in personal capacity.

The presumption under Section 139 of the Negotiable Instruments Act can be rebutted even from the evidence produced by the complainant. In the facts and circumstances of the present case, the Court below held that presumption under Section 139 of the Act has been rebutted.

The perusal of the findings given by learned Magistrate shows that these are correct, as per law and have been given while appreciating the evidence on record in right perspective. In no way, the findings can be held as perverse. The impugned judgment dated 07.06.2016 passed by learned SDJM, Bilaspur, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

August 19, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **No**