

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1081-MA of 2015 (O&M)
Date of decision: March 17, 2016

Kuldip Singh

...Applicant

Versus

Paramjit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arun Abrol, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-Kuldip Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Paramjit Kaur, challenging the impugned judgment dated 27.04.2015 passed by learned Judicial Magistrate Ist Class, Patiala, whereby the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is filed which is likely to succeed on the grounds taken therein. It is further stated that the balance of convenience is in favour of the applicant. It is, therefore, prayed that leave to appeal be granted.

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

As per the record, the complainant Kuldip Singh filed a complaint against accused Paramjit Kaur under Section 138 of the

Negotiable Instruments Act. As per complainant's version, husband of the accused namely Nasib Singh was on good friendly relations with the complainant and they were on good visiting terms. The accused informed the complainant that her husband is in possession of a harvesting combine and he is willing to sell it, to which the complainant agreed to purchase but before that, he want to inspect the same. The deal patched up for ₹10,50,000/- and the complainant after making the payment of ₹10 lacs, took the possession of the harvesting combine and ₹50,000/- was kept pending and it was settled that when the accused will clear the documents of the vehicle, the remaining amount of ₹50,000/- will be paid to the accused and it was also settled that the accused will clear the documents of the combine within a period of one month. It is also stated that harvesting combine was found in the name of some other person and complainant refused to purchase the harvesting combine and asked the accused to return his amount and to take back the possession of harvesting combine.

On 10.12.2012, complainant again approached the accused and the accused issued post-dated cheque amounting to ₹10 lacs in order to discharge her debt and liability, which on presentation for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

Learned JMJC, Patiala, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 27.04.2015.

I have gone through the judgment dated 27.04.2015 passed by learned JMIC, Patiala. I find that that 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.

The perusal of the record shows that there is not even a single document on record to show this transaction. There is no agreement to sell. There is nothing on the record regarding the payment of ₹10 lacs by the complainant to the accused. Then, there is no document regarding ownership of the harvesting combine. There is no document of any type to show the transaction or payment of ₹10 lacs to the accused. As per the case of the complainant, the husband of the accused was having friendly relations with him and it is in the evidence that harvesting combine was also in the name of husband of the accused, then it looks improbable as to why the deal was struck with accused Paramjit Kaur. She was not owner of the harvesting combine nor known to the complainant in any way. The accused has taken the probable defence that she has not given any cheque to the complainant at any point of time and the complainant has filed false complaint against her to grab the money from her and she has not taken any loan/amount from the complainant at any point of time and she has no relation with the present complainant, even she does not know the complainant. The complainant has misused the present

cheque against her by taking it from one Angrej Singh. Accused has also appeared as defence witness and stated that she had litigation with Angrej Singh. However, Angrej Singh received full and final payment and withdrew the complaint under Section 138 of the Negotiable Instruments Act. The complainant misused the cheque by taking the same from Angrej Singh. The accused also produced documents regarding the complaint filed by Angrej Singh etc.

Learned JMIC, Patiala, discussed the cross-examination of the complainant, wherein, he admitted that he has taken the cheque in question from Angrej Singh, which is Ex.C1. He also admitted that Angrej Singh has good relations with Paramjit Kaur. He also admitted that he has no transaction with Paramjit Kaur. The Court below held that the part of cross-examination of the complainant, goes on to corroborate the plea of accused.

In view of the cross-examination of the complainant as well as there being on document of any type to show this transaction between complainant and accused and there being no evidence on record to show the transaction of purchasing the harvesting combine etc., the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. There is also nothing on the record to show the capacity of the complainant to pay such a huge amount. The amount in question has not been shown in the income tax return nor bank record has been produced to show from where this amount has been withdrawn.

In view of the above discussion, I find that the findings

given by learned JMJC, Patiala, in no way, can be held as perverse. The findings have been given while appreciating the evidence in right perspective. The impugned judgment dated 27.04.2015 passed by learned JMJC, Patiala, 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.

March 17, 2016
Vgulati

(INDERJIT SINGH)
JUDGE