

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1169-MA of 2015 (O&M)

Date of decision: April 05, 2016

Santosh

...Applicant

Versus

Bimla Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Dhawan, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Santosh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bimla Rani, challenging the impugned judgment dated 17.04.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, whereby 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 further stated that if leave to appeal is not granted, the grave miscarriage of justice shall be done to him. 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 Santosh filed a

complaint against accused Bimal Rani under Section 138 read with 142 of the Negotiable Instruments Act. As per complainant's version, accused has taken a sum of ₹40,000/- from her as a friendly loan in the month of October 2011 and in order to discharge this liability, accused issued a cheque bearing No.250212 dated 24.03.2012 for a sum of ₹40,000/- in favour of complainant, which on presentation for encashment, was returned back unpaid with the remarks 'opening balance insufficient'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

The complainant produced the evidence and examined herself as CW-1. On the other hand, accused in the statement under Section 313 Cr.P.C. stated that she is innocent and falsely implicated. She also pleaded that her blank cheque has been misused by the complainant as she had borrowed ₹75,000/- on interest from her in the year 2009 and two blank signed cheques and one non-judicial signed stamp paper were handed over to the complainant as security. The accused further stated that she has paid regular interest to the complainant and on 05.05.2011, she has refunded the loan amount of ₹75,000/- to the complainant vide cheque bearing No.326102 and the complainant told her that security cheques will be returned within couple of days but later on she denied on one pretext or the other. The accused also stated that she has not taken any loan from the complainant as alleged in the complaint and the complainant has misused her security cheques. Accused in defence examined DW-1

Baljeet Kaur, Manager, who has brought the record i.e. certified copy of statement of accounts in the name of Bimla Rani for the period 01.05.2011 to 31.05.2011 Ex.D1 and copy of cheque No.326102 dated 05.05.2011 amounting to ₹75,000/- Ex.D2. Accused also got examined DW-2 Vijay, who also supported the version of the accused.

Learned JMIC, Jalandhar, while discussing the evidence held that probable defence has been raised by the accused, which is duly supported and corroborated and presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted and acquitted the accused-respondent vide impugned judgment dated 17.04.2015.

I have gone through the judgment dated 17.04.2015 passed by learned JMIC, Jalandhar. 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. No illegality has been committed while passing the impugned judgment. 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.

The complainant in cross-examination denied receiving of ₹75,000/- and also denied her signatures at point 'A' on Ex.D1. This fact regarding paying of ₹75,000/- to the complainant by the accused has been duly proved by bringing the bank record as well as by examining DW-2. Furthermore, regarding the present transaction, there is no document on the record. The probable defence raised by

the accused is duly supported and corroborated by the defence evidence. Therefore, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

In view of the above discussion, I find that the findings given by learned JMIC, Jalandhar, in no way, can be held as perverse. The findings have been given while appreciating the evidence in right perspective. The impugned judgment dated 17.04.2015 passed by learned JMIC, Jalandhar, 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.

April 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE