

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1249-MA of 2014 (O&M)
Date of decision: May 10, 2016

Amarjit Kaur

...Applicant

Versus

Kanwaljit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kamal Chaudhary, Advocate
for the applicant.

Mr.H.S.Dhindsa, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Amarjit Kaur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Kanwaljit Singh, challenging the impugned judgment dated 19.03.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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 cheques were issued in discharge of valid liability and the cheques were dishonoured on account of insufficient funds. However, the claim of the applicant stand discarded without taking into consideration the mandate of law. It is, therefore,

prayed that leave to appeal be granted.

Notice of motion was issued and learned counsel for the respondent appeared and contested the application.

Lower court record was also requisitioned.

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

As per the record, the complainant Amarjit Kaur filed a complaint against accused Kanwaljit Singh under Section 138 of The Negotiable Instruments Act. As per complainant's version, accused represented himself as an attorney of Sajjan Singh and the accused being attorney of above mentioned Sajjan Singh sold his plot measuring 200 Sq. yard in Abadi Bhai to the complainant for a sale consideration of ₹12,40,000/-. The complete detail of the said plot is mentioned in the sale deed dated 19.01.2009. It is alleged that the accused knew it very well that the said plot actually does not exist at the spot as such he with a malafide intention executed sale deed of the above said plot in favour of the complainant showing its price only as ₹3,00,000/-. After the purchase of the above said plot and after execution and registration of its sale deed, the complainant went to the spot for constructing the boundary wall and the complainant started constructing boundary wall on the plot as was disclosed by the accused to the complainant but some other persons came at the spot and did not allow the complainant to construct boundary wall on that plot stating that the said plot belongs to them. Thereafter, the complainant approached the accused and requested him to get

constructed boundary wall on the above mentioned plot at the spot and also to settle the matter but the accused failed to get the needful done and put off the matter on one pretext or the other and harassed the complainant. The accused agreed to return the above mentioned amount of ₹12,40,000/- to the complainant which was received by him as sale price of the said plot from the complainant. The complainant was already too much harassed being cheated by the accused as such she agreed to receive back her above mentioned amount of ₹12,40,000/- from the accused in order to get rid of the said dispute. In this regard, an agreement dated 03.04.2010 was also executed by the accused with the complainant whereby the accused paid an amount of ₹6,00,000/- in cash to the complainant and agreed to pay the remaining amount of ₹6,40,000/- to the complainant up to 03.07.2010 but he failed to pay the said amount. The accused issued two cheques bearing No. 208517 dated 30.04.2012 for ₹1,00,000/- and cheque No. 208518 dated 15.05.2012 for ₹1,40,000/- in favour of the complainant. The accused also promised to pay the remaining amount of ₹4,00,000/- in cash to the complainant positively upto 30.05.2012. When the cheques were presented for encashment, the same were returned 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 JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 19.03.2014.

From the perusal of the record, I find 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 below. There is nothing on the record to show that findings given by learned Magistrate are perverse and against the evidence.

The accused in the statement under Section 313 Cr.P.C. pleaded that he was innocent and falsely implicated in this case. There is no legal enforceable liability against him on the basis of agreement to sell which is Ex. C4. He had issued the cheques bearing No.208517 and 208518 duly signed by him, blank and undated as the security to Amarjit Kaur at the time of making Ex. C4 which were agreed to be returned back to him after receiving the remaining payment in cash, but after his several requests Amarjit Kaur did not return the cheques and misused them. As per the accused at that time he had paid ₹6,00,000/- in cash on 03.04.2010 for the purchase of plot measuring 200 Sq. yard as above mentioned. Amarjit Kaur misused both the cheques by filling the body thereof without his consent and thereby committing offence of forgery. He had already tendered the remaining amount of ₹6,40,000/- as per Ex.C4 in presence of Gurmit Singh C/o G.S. Property dealer and Baljit Singh. The accused has claimed that the complaint is not maintainable against him by the Power of attorney holder Gurpreet Singh as the

facts given in the complaint primarily related to Amarjit Kaur and Gurpreet Singh was not conversant with the facts of the present complaint.

Learned Magistrate after appreciating the evidence held that argument of learned defence counsel that CW-1 is not a competent witness, has full weight. On the perusal of the case file, it is found that the complainant has filed the present complaint through her power of attorney holder Harpal Singh who was father of the complainant but later on, in the after notice evidence, Gurpreet Singh CW-1 brother of the complainant was substituted in place of Harpal Singh due to the death of Harpal Singh. CW-1 Gurpreet Singh the substituted power of attorney holder in his affidavit had mentioned that he was aware of the facts of the complaint and complainant was unable to come present in the court due to some personal family problems. In his cross examination CW-1 has deposed that complainant unable to turn up in the court due to bad medical health. No satisfactory explanation has been given as to why the complainant has herself not stepped in the witness box. No proof regarding the ill health of the complainant has been placed on record by the attorney. Further from the cross examination of CW-1 it is found that the present attorney is not personally aware about the transaction in question. He stated in his cross-examination that he was not a marginal witness to the sale deed Ex.C2 and was not present at the time of registration of the same which means he has not witnessed the main transaction in question. It was further stated by CW-2 that he

was not present at the time of execution of agreement to sell Ex.C2 and the cheques in question were also not taken by him from the accused. CW-2 has also not witnessed the execution of agreement Ex.C4 which is the most vital document in question. It is in cross-examination that Amarjit Kaur had met the accused at the time of showing the plot and thereafter she has never met the accused and whole dealings regarding the payment was completed by the father of the complainant Harpal Singh, which is contrary to the stand taken by the complainant in the complaint.

The Court held that CW-2 has no personal knowledge regarding the transaction in question. The Court further held that as per agreement Ex.C4 accused has paid the amount of ₹6,00,000/- on the same day to the complainant and agreed to pay the remaining payment on 03.07.2010 to the complainant failing which he has liberty to get the same recovered through appropriate remedy but no effort was made by the complainant to recover the amount. The sale deed was registered in favour of the complainant, mutation was entered in the name of complainant and Ex.D1 also shows site plan of the property in question but as per agreement Ex.C4 there was some term which was settled between the accused and complainant according to which accused was liable to pay on or before 03.07.2010. The complainant also remained silent that whether he has taken any security cheques at the time of execution of agreement Ex.C4 nor he has specifically denied the factum of defence taken by the accused that he has given security cheques at the time of

execution of Ex.C4 .

The Court below further held that it is for the complainant to prove that he has received the amount of ₹3,00,000/- by placing on record any receipt and the reason of delaying the recovery for about two years but no evidence was placed on record. Learned Magistrate also held that examination of Gurmeet Singh is important, who can depose about the transaction in question but complainant failed to do the same.

In view of the above discussion, I find that the findings have been given by learned JMIC, Ludhiana, while appreciating the evidence in right perspective. The impugned judgment dated 19.03.2014 passed by learned JMIC, Ludhiana, 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.

May 10, 2016
Vgulati

(INDERJIT SINGH)
JUDGE