

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1361-MA of 2015 (O&M)
Date of decision: January 29, 2016

Raj Kishan

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Balkar Singh, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-Raj Kishan has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Kiran Sapra, challenging the judgment dated 21.04.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby accused-respondent was acquitted of the charges.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that learned JMJC, Yamuna Nagar at Jagadhri has failed to appreciate the evidence and has based the judgment of acquittal on conjectures and surmises. The settled law has been discarded while passing the impugned judgment, which is liable to be set aside. It is, therefore, prayed that leave to file the appeal be granted.

As per the record, the complainant Raj Kishan filed a complaint against accused Smt.Kiran Sapra and Smt.Jyoti under Section 138 of the Negotiable Instruments Act, 1881. As per complainant's version, he was registered owner of vehicle bearing registration No.HR-38B-2924 and sold the same to accused No.2 Jyoti for a sum of ₹2,85,000/- vide agreement dated 27.06.2012. It is further the case of the complainant that accused No.2 paid ₹60,000/- to him in cash at the time of execution of agreement and possession was delivered to her along with RC on the same day. It is also the case of the complainant that accused No.2 agreed to pay a further sum of ₹18,000/- in cash to the complainant within a week and for remaining amount of ₹2,07,000/-, accused No.1 out of her free will and in discharge of existing liability of accused No.2 towards the complainant, issued a cheque bearing No.391146 dated 26.07.2012 upon understanding that when accused No.2 will pay the said amount in cash, the cheque in question will be returned back to accused No.1. On presentation of the cheque for encashment, it was returned with the remarks 'insufficient funds'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

Learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent Kiran Sapra vide impugned judgment dated 21.04.2015.

After hearing learned counsel for the applicant and after going through the record, I find that accused No.2 Jyoti has already

been declared Proclaimed Offender and accused No.1 Kiran Sapra has been acquitted. The perusal of the facts of the complaint itself shows that vehicle was sold to Jyoti and the liability to pay the amount was upon Jyoti only. Even from the averments of the complaint, it is clear that it is nowhere stated that Kiran Sapra stood guarantor for the payment. Rather, it is stated in the complaint that Kiran Sapra at her own free will, gave cheque to the complainant of the remaining amount of ₹2,07,000/-, which was to be returned back when accused Jyoti is to make the payment. There is nothing in the complaint itself that complainant asked for the guarantee or surety and Kiran Sapra stood surety or the cheque was given to the complainant by Kiran Sapra as a guarantor. There is also nothing in the complaint that the cheque was to be presented in the bank for encashment.

Learned Magistrate, after discussing all these facts and also discussing the averments in the agreement held that Ex.C1 has not been signed by accused Kiran Sapra. The complainant in his cross-examination has admitted this fact that accused Kiran Sapra had never signed the agreement Ex.C1, vide which he had sold his vehicle to accused No.2 Jyoti. When accused No.1 Kiran Sapra is not even a signatory to agreement Ex.C1 as a guarantor or as a witness or in any other capacity, then in no way, Kiran Sapra can be held as liable to pay the amount to the complainant nor it can be held that there was any pre-existing liability or debt for which the cheque in question was issued by Kiran Sapra.

Learned Magistrate further held that in agreement Ex.C1, it

is specifically mentioned that if remaining payment is not made by accused No.2 Jyoti, the remedy available with the complainant was not to present the cheque in question to the Bank but was to file a suit for cancellation of agreement for claiming back the vehicle in question and for recovering the rent from accused No.2. It is also discussed by learned Court below that it is admitted fact by the complainant that vehicle was never transferred by him in the name of accused No.2. DW-2 has proved the fact that complainant sold the vehicle on 18.07.2012 to Shyam Sunder. The Court held that as such, even if agreement Ex.C1 is to be read against the present accused still it is clear that complainant who had himself committed breach of contract, the complainant was not authorized to present cheque in question to the bank and the accused cannot be held guilty. The transfer file has been produced which shows that complainant had applied to RTO office intimating the fact that original RC of the vehicle in question has been lost by him. The copy of the DDR is contained in the said file showing that complainant got registered this DDR regarding loss of RC. The version of the complainant that at the time of execution of agreement, some blank signed forms and blank signed papers were handed over to accused No.2, was not believed by the Court below.

In view of the above discussion, the accused has raised probable defence. There is no pre-existing liability against accused Kiran Sapra. In no way, the findings given by learned JMJC, Yamuna Nagar at Jagadhri, can be held as perverse. Rather, these have been given as per the law while appreciating the evidence in right

perspective. The impugned judgment dated 21.04.2015 by learned JMIC, Yamuna Nagar at Jagadhri, 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.

January 29, 2016
Vgulati

(INDERJIT SINGH)
JUDGE