

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1628-MA of 2015(O&M)
Date of decision: January 25, 2016

Rajeev Jawa

...Applicant

Versus

Ramesh Chand Chaudhary

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mansur Ali and Mr.H.S.Deol, Advocates
for the applicant.

INDERJIT SINGH, J.

Applicant-Rajeev Jawa has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ramesh Chand Chaudhary, challenging the judgment dated 04.09.2015 passed by learned Judicial Magistrate Ist Class, Gurgaon, 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 trial Court has erred in acquitting the respondent despite there being cogent evidence. It is, therefore, prayed that leave to file the appeal be granted.

As per the record, the complainant Rajeev Jawa filed a complaint against accused Ramesh Chand Chaudhary under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881. As

per complainant's version, the accused borrowed friendly loan of ₹10 lacs from the complainant on 15.06.2011 and in order to discharge his liability, the accused issued cheque bearing No.839820 dated 29.08.2014 for ₹10 lacs, which on presentation for encashment 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, Gurgaon, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 04.09.2015.

The defence of the accused is that he had not borrowed any amount from the complainant. Rather, the cheque in question was given by him to the complainant as blank signed cheque much earlier in 2011-2012 qua some other transaction and by misusing that blank signed cheque, the complainant has filed the complaint. The accused also appeared in the witness box and tender into evidence his affidavit Ex.DW1/A. DW-2 Shalender Pratap Singh, Manager, Punjab and Sind Bank, Gurgaon appeared in the witness box and tendered cheque book issuance record Ex.DW2/A2, which shows that the said cheque book was issued in favour of the accused on 09.01.2012.

After hearing learned counsel for the parties and after going through the record, I find that at the time of arguments, nothing has been argued as to how the findings given by learned Court below are perverse or against the 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.

I have perused the impugned judgment passed by learned JMIC, Gurgaon and find that the reasonings given in the impugned judgment are as per evidence and law. The findings have been given while appreciating the evidence in right perspective. The complainant has not produced on record his income tax return. He has not produced any documentary evidence showing lending of huge amount of ₹10 lacs as loan to the accused. Neither any account statement nor any security document of any type has been produced on the record to prove the transaction. There is no presumption regarding advancement of loan. Nothing is there on the record in any way, except the oral statement that loan has been given to the accused on 15.06.2011. No particulars are there as to on which place and in whose presence the loan was given and from where the amount was withdrawn. No bank account statement has been produced to show the financial capacity of the complainant to lend such a huge amount.

From the case of the complainant itself, in no way, it can be held that there was any existing liability of the accused regarding which the cheque was issued by him. The cheque was stated to be issued on 29.08.2014 but the accused has duly proved that the cheque book was issued to him on 09.01.2012. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted and the accused has raised probable defence.

In view of the above discussion, I find that the findings given by learned JMIC, Gurgaon, in no way, can be held as perverse.

The impugned judgment dated 04.09.2015 passed by learned JMIC, Gurgaon, 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 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE