IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-166-MA of 2015(O&M)
Date of decision: July 15, 2016

Rameshwar Singh Pathania

...Applicant

Versus

Darshan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Munish Mittal, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Rameshwar Singh Pathania has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Darshan Lal challenging the impugned judgment dated 21.11.2014 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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 the complaint of complainant-applicant was dismissed before the Court of learned JMIC, Yamuna Nagar at Jagadhri and the applicant wants to challenge the judgment dated 21.11.2014 as the same has been passed without considering the material facts and evidence on record. 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 Rameshwar Singh Pathania filed a complaint against accused Darshan Lal under Section 138 of the Negotiable Instruments Act. As per the complainant's version, accused borrowed ₹4 lacs from the complainant in September 2011, for a period of three months and in discharge of said existing liability, the accused had issued a cheque bearing No.031006 dated 21.02.2012 in the sum of ₹2,50,000/- to the complainant, which on presentation for encashment, was returned back unpaid with the remarks 'Funds insufficient'. Legal notice was served upon the accused on 16.03.2012. Thereafter, accused approached the complainant with a request that he would make the payment in 3-4 months and accused issued another cheque bearing No.031007 dated 04.07.2012 in the sum of ₹3,25,000/-, which on presentation for encashment, was returned back unpaid with the remarks 'Funds insufficient'. When the amount was not paid, then the complaint was filed within time.

The accused took the plea in defence that he had never issued the cheques in question in favour of the complainant in discharge of any existing legal liability. He further stated that in fact, complainant along with one Vikram Verma is doing partnership business of money lending. He also stated that he had taken ₹3.5 lacs from the complainant and Vikram Verma on 25.04.2011 on interest @ 3% per month. The accused further stated that at the time of taking the said loan, he had given three blank signed cheques bearing No.031006 to 031008 to the complainant and Vikram Verma along with other blank signed forms and blank signed stamp papers as security for repayment of loan. He also stated that in September 2011, he had returned back ₹4.3 lacs to Vikram Verma through cheque bearing No.118709 dated

29.09.2011. He further stated that at that point of time, Vikram Verma assured him that he will return the cheque and papers to him but the allegation of the accused is that those documents were not returned back by complainant and Vikram Verma to him and both in collusion with each other, filed the present complaint.

Learned Judicial Magistrate, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 21.11.2014.

The perusal of the record shows that the defence plea taken by the accused is probable and also supported and corroborated by evidence of the complainant and defence evidence. The complainant in cross-examination has admitted his relations with Vikram Verma for the past 7-8 years but denied the fact that he and Vikram Verma are doing the business of money lending. The complainant also admitted from beginning to the end of his cross-examination that said Vikram Verma was accompanying him in the court room itself and his entire cross-examination was taking place in the presence of Vikram Verma. The accused examined himself as DW-2 and stated that the complainant along with Vikram Verma is doing business of money lending and deposed as per defence plea.

The accused has placed on record the reply to the legal notice, which is Ex.D9, whereas the complainant has concealed the fact regarding receiving of reply to the legal notice given by the accused. The defence version is also supported and corroborated by DW-1 Ajay Bhasin, head cashier of Central Bank of India, who proved the payment of ₹4,30,000/- on 28.09.2011 vide cheque No.118709 to Vikram Verma.

On the other hand, the complainant has not taken the plea that any writing has been scribed at the time of advancement of loan in the complaint. Otherwise, no date has been mentioned on which the loan was given. After completion of the cross-examination of the complainant, the document Ex.P8 was tendered showing the writing on 16.09.2011 but if this writing was with the complainant, then why he has not mentioned the same in the complaint or in examination-in-chief. The Court below disbelieved the version of the complainant regarding this writing also.

I have gone through the judgment passed by the Court below. I find that, the judgment passed by the Court below is correct and 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.

Keeping in view the above discussion, I find that impugned judgment dated 21.11.2014 passed by learned JMIC, Yamuna Nagar at Jagadhri, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

July 15, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**