IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-776-MA of 2016 (O&M)
Date of decision: May 23, 2016

Suresh Kumar

...Applicant

Versus

Pawan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pritam Singh Dhanoa, Advocate
for the applicant.

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<u>INDERJIT SINGH, J.</u>

Applicant-Suresh Kumar has filed this application under Section 378(4) read with Section 372 Cr.P.C. seeking permission for leave to appeal against respondent Pawan Kumar, challenging the impugned judgment dated 23.02.2016 passed by learned JMIC, Anandpur Sahib, 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, 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 Suresh Kumar filed a complaint against accused Pawan Kumar under Section 138 of the Negotiable Instruments Act. As per the complainant's version, he is sole proprietor of M/s Mahavir Finance Company Registered, from which the accused has obtained a loan from time to time and in respect of his liability to repay the loan amount, executed an affidavit dated 27.04.2011 but the accused miserably failed to repay the borrowed amount. Thereafter, accused issued two cheques bearing Nos.119097 and 119098 dated 14.12.2011 amounting to ₹5 lacs each in favour of the complainant. When the cheque bearing No.119098 was presented for encashment, it was returned back unpaid with the remarks 'account closed'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

The defence of the accused is that he has not borrowed any money from the complainant, so he is not legally liable and the complainant has created the false loan entries in his account books which are forged and fabricated.

Learned JMIC, Anandpur Sahib, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 23.02.2016.

Learned Magistrate held that complainant has made a generic and bald allegation against the accused in his complaint and nothing has been mentioned in the complaint that on which date or what amount of loan was given to the accused. Though the complainant claims to be a financier but there is no averment that for what purpose the alleged loan was granted to the accused. The rate of interest of the alleged loan to the complainant also fails to find place in the averments of the complaint. The perusal of affidavit Ex.C8 shows that the loan amount of ₹10 lacs was given to the accused with the rate of interest @ 2% per month. The Court held that it is highly improbable that a person who is running a finance business, would lend a huge amount of ₹10 lacs to other without any surety or guarantee.

Further, I find that findings given by learned Court below in the impugned judgment dated 23.02.2016 are correct, as per evidence and law. Learned JMIC, Anandpur Sahib, has appreciated the evidence in right perspective. 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.

Though the complainant stated himself as a sole proprietor of M/s Mahavir Finance Company Registered but no security document has been taken at the time of granting the loan. The averments in the complaint are also vague. There is nothing that on which date and in which month, year and how the amount has been given. It is simply written that from time to time the loan was given. Only ledger/khata has been produced which was not bearing any signature of the accused. This document without any other supporting document is of no value and it can be held at the most 'document in one's own favour'. There is no averment in the complaint regarding the interest @ 2%. There is nothing on the record that any pronote or receipt etc. was executed. It is improbable that owner of a finance company would advance the loan without getting executed any security document or taking surety etc.

Furthermore, even in the complaint, there is no mention that loan was of ₹10 lacs. No other account book has been placed on record to prove the alleged transaction. Affidavit Ex.C8 on file, in no way can be held as substantial piece of evidence. At the most, it can be held as previous statement of the accused and can be used only for the purpose of confronting the accused. Further, I find that 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 have been given by learned JMIC, Anandpur Sahib, while appreciating the evidence in right perspective. The impugned judgment dated 23.02.2016 passed by learned JMIC, Anandpur Sahib, 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 for grant of leave to appeal and therefore, the present application stands dismissed.

May 23, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**