IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1723-MA of 2015 (O&M)
Date of decision: February 04, 2016

Shri Ram Transport Finance Company Ltd.

...Applicant

Versus

Sanjeev Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sandhu, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Shri Ram Transport Finance Company Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sanjeev Kumar, challenging the impugned judgment dated 06.08.2015 passed by learned Judicial Magistrate Ist Class, Abohar, whereby the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal 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 Shri Ram Transport Finance Company Ltd. filed a complaint against accused Sanjeev

Kumar under Section 138 of the Negotiable Instruments Act, 1881. As per complainant's version, accused had got financed a vehicle under agreement from the complainant and defaulted in installments and subsequently accused in discharge of his legal liability, issued cheque No.520702 dated 17.07.2013 for ₹1,25,000/-, which on presentation for encashment, was returned unpaid with the remarks 'funds insufficient. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

After the evidence of the complainant, the accused was examined under Section 313 Cr.P.C. but the accused has not led any evidence in defence.

Learned JMIC, Abohar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 06.08.2015 and held that loan was availed by the accused of ₹80,000/- on 07.07.2009 vide Schedule-I Ex.C.12, which was to be paid in 33 installments of ₹3540/- each, which comes to ₹1,16,840/- upto 20.03.2012. During cross-examination, it is admitted by the complainant that accused has deposited ₹1,20,500/- as per the account statement. If the accused has made payment of ₹1,20,500/- to the complainant regarding the loan in question, then it was required on the part of the complainant to prove that how the cheque amount was outstanding against the accused. The Court also held that computer statement, which is placed on the record, has not been proved as per law as no certificate under Section 65B of the Indian Evidence Act has been given. The Court below further held that the perusal of clause 1.7 of the agreement Ex.C11 shows that it has been mentioned in this clause that the borrower has agreed to issue post dated cheques for the repayment of credit facilities. In view of these circumstances, the version of the accused that the cheque in question was handed over to the complainant as security at the time of availing financial assistance seems to be more plausible.

The perusal of the findings shows that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence. The reasonings given by learned JMIC, Abohar, are correct, as per evidence and law. Otherwise also, nothing has been argued as to how the findings given by the 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.

In view of the above discussion, I find that the findings given by learned JMIC, Abohar, in no way, can be held as perverse. The impugned judgment dated 06.08.2015 passed by learned JMIC, Abohar, 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.

February 04, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**