IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1774-MA of 2015 (O&M)
Date of decision: April 25, 2016

Sarabjit Singh Shad

...Applicant

Versus

Charanjit Singh @ Raju

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

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INDERJIT SINGH, J.

Applicant-Sarabjit Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Charanjit Singh @ Raju, challenging the impugned judgment dated 29.07.2015 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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 also stated that acquittal of the accused has resulted in grave miscarriage of justice. 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 Sarabjit Singh Shad filed a complaint against accused Charanjit Singh @ Raju under Section 138 of The Negotiable Instruments Act. As per complainant's version, accused took a friendly loan for a sum of ₹5 lacs in the first week of October 2012 from complainant and agreed to return the same within two months. The accused in order to discharge his legally enforceable liability towards the complainant, issued a cheque bearing No.731882 dated 28.12.2012 for ₹5 lacs, in favour of the complainant, which on presentation for encashment, 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.

Learned JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 29.07.2015.

I have gone through the judgment dated 29.07.2015 passed by learned JMIC, Ludhiana. I find that that the findings given by learned Magistrate are correct, 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.

The accused has taken the probable defence that the cheque in question was given to the complainant in the year 1996-97 and he has revalidated the same without his consent and presented in the bank by making cutting in the year column of the cheque. He further took the stand that he has not taken a loan of ₹5 lacs. He had friendly relations with the complainant and when he had made the payment of loan to the complainant, the complainant told him that he has lost the security cheque. He has not filled the particulars of the body, date of the cheque. Neither he has made the cutting on the cheque. The cutting has been made without his consent. It is also stated that he had taken a loan of ₹1,20,000/- which has already been re-paid.

The accused also examined DW-1 Narinder Kumar, Clerk, Registrar of Companies, who brought the statement of account of the accused and deposed that the account was closed on 28.03.2003. He also deposed that on the cheque Ex.C1, in column of date, where the year is to be mentioned, digits are printed as '19' and it is a settled principle of banking that if there is any cutting on the cheque, that is to be returned dishonoured.

From the record, first of all, I find that there is no document on the record to show the loan transaction of ₹5 lacs. No record has been produced by the complainant of any type to show even prima facie this loan transaction. The complainant in the cross-examination has stated that he has paid the accused ₹5 lacs from the account of his company but this entry has not been reflected in the company accounts. If the amount was paid from company account, then it cannot be believed that it was not mentioned in the accounts of the company. This loan amount has not been mentioned in the income tax return.

Furthermore, the probable defence is supported from the fact that in the cheque, the year has been printed with figure '19', which means that the cheque book was of the year before 2000. There is cutting on this figure and as per complainant, the cheque was issued on 28.12.2012. It looks also improbable that when the account was closed in 2003, then how the accused would issue the cheque in 2012. As per DW-2 Bisheshwar Dutt, there is also cutting in the date column of the cheque.

The probable defence has been supported and corroborated by the defence evidence as well as from the cross-examination of the complainant. 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, Ludhiana, while appreciating the evidence in right perspective. The impugned judgment dated 29.07.2015 passed by learned JMIC, Ludhiana, 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.

April 25, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**