IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-179-MA of 2014 (O&M)
Date of decision: October 20, 2016

Seema Devi Ahuja

...Applicant

Versus

Manju Handa

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjeev Roy, Advocate for
Mr.I.P.S.Doabia, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Seema Devi Ahuja has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Manju Handa, challenging the impugned judgment dated 02.12.2013 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which 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 that applicant shall suffer irreparable loss and grave injustice if the leave to appeal is not granted. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Seema Devi Ahuja filed a complaint against accused Manju Handa under Section 138 of the

Negotiable Instruments Act. As per complainant's version, accused had very close family relations with her and she had approached the complainant at her residence and requested for advancement of friendly loan of ₹2,50,000/- for business purposes. The accused was the proprietor of firm M/s Shivam Creations. The complainant advanced friendly loan of ₹2,50,000/- to the accused on 30.04.2006 and the accused agreed to repay the same within three months and to assure the repayment of the said loan, the accused issued a cheque bearing No.293293 dated 01.08.2006 for a sum of ₹2,50,000/- in favour of the complainant, which on presentation before the bank for encashment, was returned back unpaid with the remarks 'Exceeds Arrangement'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined herself as CW-1 and also examined CW-2 Sewa Singh, Bank Official and CW-3 Sunder Devi, Bank Official and tendered documents. In the statement under Section 313 Cr.P.C., the accused stated that she never took any loan of ₹2,50,000/- from the complainant as alleged and had given the cheque in question as a blank signed cheque to the cousin brother of the complainant namely Pankaj for payment of the HUDA and MCF charges. She denied that she had issued the cheque in question in favour of the complainant in discharge of her debt and liability. In defence, accused examined DW-1 Sumer Singh, ARC Sub Registrar, DW-2 Sayeed, Hand Writing Expert, DW-3 Raj Kumar Gupta, Bank official, DW-4 Desh Raj, Bank Official and DW-5 Parveen, Ahlmad and tendered documents.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent.

I have heard learned counsel for the applicant and have gone through the record.

From the perusal of the record, especially the impugned judgment, I find that the findings have been given by learned JMIC, Faridabad, while appreciating the evidence in right perspective. In no way, the findings can be held as perverse. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

Learned Magistrate from the evidence first of all found that the complainant was not knowing the accused, therefore, giving of huge amount of ₹2,50,000/- without securing any document is not believable. Secondly, at the time of giving the loan, the accused has FDRs of ₹25 lacs in her account and it is held that then why the accused would take loan of ₹2,50,000/- from the complainant. The present complainant is a housewife and has no source of income and she is a widow. The complainant stated that she has taken ₹1 lac from her father-in-law and she was having ₹1.5 lacs with her. It is held that why she will borrow amount and give it to the accused, with whom she has no close or family relations.

There is no document to show the loan transaction. Furthermore, the accused examined DW-5 Parveen, Ahlmad, who proved on record the certified copy of the complaint under Section 138 of the Negotiable Instruments Act titled as 'Pankaj Arora vs. Manju Handa' Ex.DW5/1 and legal notice dated 12.07.2006 sent by Pankaj to Manju in the said case as Ex.DW5/2. The accused also examined Hand Writing Expert, who has opined that the date and other particulars of the cheque had not been filled by the accused, which also corroborate the defence version.

Furthermore, from the record, I find that the cheque in question relates to the cheque book of the year 2002-03, whereas several other cheque books had also been issued to the accused afterwards and the cheque is stated to have been issued in year 2006. All this evidence on record, shows that accused has raised probable defence, which is duly corroborated by defence evidence as well as evidence of the complainant and the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

In view of the above discussion, I find that the impugned judgment dated 02.12.2013 passed by learned JMIC, Faridabad, 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.

October 20, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**