

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-293-MA of 2014 (O&M)

Date of decision: May 03, 2016

Pritpal Singh

...Applicant

Versus

Manoj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Bansal, Advocate
for the applicant.

Mr.Sandeep Arora, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Pritpal Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Manoj Kumar, challenging the impugned judgment dated 13.11.2013 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 in the application that an important question of law of general importance arises in the case and as such, the application deserves to be allowed. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued and learned counsel for the respondent appeared and contested the application.

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

As per the record, the complainant Pritpal Singh filed a complaint against accused Manoj Kumar under Section 138 of The Negotiable Instruments Act. As per complainant's version, accused has raised loan from complainant and in order to discharge his legal and financial liability towards the complainant, accused issued a cheque bearing No.922086 dated 05.01.2014 for ₹24,400/- in favour of the complainant, which on presentation for encashment, was returned back unpaid with the remarks 'funds insufficient'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

Learned JMJC, Jalandhar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 13.11.2013.

The accused took the plea that he has never taken any loan from the complainant. The cheque in question has been misused by complainant with the active connivance of partner of his firm M/s Singh Finance Corporation. The cheque in question has never been issued to the complainant in his personal capacity as alleged by complainant. Accused himself appeared as DW-1 and deposed as per his version. He stated that Pritpal Singh is running Singh Finance Corporation along with his partners. He has obtained loan of

₹25,000/- from M/s Singh Finance Corporation in the year 2001. He does not know the name of other partners. At the time of giving the loan, Pritpal Singh partner, has obtained his signatures on blank cheques, blank stamp papers and blank pronote for security reasons and assured him that the same will be returned back as and when he will repay the loan amount. But complainant in connivance with his partners, has used the said blank cheques, pronote and stamp papers and lodged false complaints against him including the present case. Accused further pleaded that Pritpal Singh has also cheated other persons by using their cheques fraudulently and due to these reasons various FIRs have been registered against him at Police Station Divn. No.2 viz FIR No.13 dated 30.01.2010, FIR No.139 dated 15.10.2010 and FIR No.140 dated 15.10.2010, which are pending before learned JMIC, Jalandhar. The accused also stated that he had repaid the loan to Singh Finance Corporation. Harjit Singh employee of Singh Finance Corporation has taken full and final payment of ₹25,000/- from him on 25.06.2006 and issued receipt in this regard on the letter paid of the company, copy of which is proved as Ex.D2. It is also deposed by the accused that complainant in connivance with the process server, got declared him proclaimed offender. Pritpal Singh has taken ₹75,000/- from him and executed a writing to this effect Ex.DW1/A. Pritpal Singh has also filed a case under Section 138 of the Negotiable Instruments Act against his father by misusing the cheque of his father and then the FIR was got registered by the father of the accused against the complainant under Section 420 IPC.

DW-2 Head Constable Jaswant Singh mainly deposed regarding the FIR registered against the complainant under Sections 406, 420 and 120-B IPC at Police Station Divn. No.2. DW-3 Uma Shankar also supported the version of the accused.

Learned JMIC, Jalandhar, after appreciating the evidence in right perspective, held that there is no document on record to prove the loan transaction. The Court also scrutinized the document Ex.DW1/A, in which ₹75,000/- has been taken by the complainant as full and final payment from the accused. The Court also discussed other evidence on record and held that probable version given by accused is correct. The Court below held that the complainant has failed to prove his case against Manoj Kumar beyond shadow of reasonable doubt.

I have gone through the judgment dated 13.11.2013 passed by learned JMIC, Jalandhar. 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. As no document of any type has been produced by the complainant and further the probable version is reliable and supported by defence evidence, presumption under Section 139 of the Negotiable Instruments Act is duly rebutted.

In view of the above discussion, I find that the findings have been given by learned JMIC, Jalandhar, while appreciating the

evidence in right perspective. The impugned judgment dated 13.11.2013 passed by learned JMIC, Jalandhar, 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.

May 03, 2016
Vgulati

(INDERJIT SINGH)
JUDGE