IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-368-MA of 2015 (O&M)
Date of decision: February 09, 2016

Balvir Singh

...Applicant

Versus

Chander Monga

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.B.Raheja, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Balvir Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Chander Monga, challenging the impugned judgment dated 13.01.2015 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 further stated that the judgment passed by learned JMIC, Abohar is unsustainable in law and the same is liable to be set aside. It is, therefore, prayed that leave to file appeal be granted.

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

As per the record, the complainant Balvir Singh filed a complaint against accused Chander Monga under Sections 138 of the

Negotiable Instruments Act, 1881. As per complainant's version, in order to discharge legal liability, accused issued cheque bearing No.185809 daed 28.10.2013 for ₹9,50,000/- drawn on Allahabad Bank in favour of the complainant, 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.

Learned JMIC, Abohar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 13.01.2015.

The perusal of the findings given in the impugned judgment shows that these findings cannot be held as perverse. The findings have been given by appreciating the evidence in right perspective. 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.

It is the case of the complainant that accused issued the cheque to discharge his legal liability but there is nothing in the complaint as to what was the legal liability and how it arose. No particulars have been mentioned regarding the legal liability. No date, month and year has been mentioned as to when the amount was given to the accused. There is also nothing as to on which date the demand of raised. No security document has been obtained at the time of giving such a huge amount to the accused. Furthermore, nothing has been mentioned as to on which place and in whose presence the money was given and from where this amount came to the complainant. Even in the complaint, there is no mention that how the complainant knew the accused. It looks unnatural that such a huge amount would be given to the accused, to whom the complainant is not knowing nor having any type of relationship and that too without obtaining any security document. It is in the complaint that complainant received ₹14 lacs as pensionary benefits. Even if it is taken, even then, nobody will give substantial amount of ₹9,50,000/- out of the pensionary benefits without obtaining any security document. There is nothing on the record to prove the transaction between the complainant and the accused.

Furthermore, earlier the complainant stated in the cross-examination that he advanced ₹9,50,000/- to the accused from the amount of ₹14 lacs received by him as pensionary benefits. Later on he stated that he obtained ₹2,50,000/- from his brother-in-law and handed over to accused and remaining ₹7 lacs was given to the accused after withdrawing the same from his bank account. The accused has produced the evidence i.e bank account statement of the complainant Ex.D1. It nowhere shows that any amount of ₹9,50,000/- or ₹7,00,000/- was withdrawn from this account. Rather, at no stage of time, there was amount more than ₹7,00,000/- in his account. Learned counsel for the applicant stated that the applicant has second bank account but even after defence evidence, the complainant has not tried to produce evidence regarding second bank account. The complainant was having no capacity to pay such a huge amount. He was earning ₹10,000/- per month after retirement and his family consist five members and he also purchased one tralla in the year 2013. The complainant also stated that he did not know accused directly and had no dealings or concern with the accused.

Furthermore, in the present case, the accused has examined Handwriting and Fingerprint Expert, who has given the report that in the figure ₹95,000/- '0' has been inserted. The Court below after seeing the cheque has also observed that it looks with the naked eye that '0' has been added later on. The copy of the cheque was also shown to me in the Court. From the naked eye, it also looks to me that '0' has been inserted later on.

The accused has raised probable defence that cheque of ₹95,000/- was given to Iqbal Singh, which was misused by making it as of ₹9,50,000/- by inserting '0' by the complainant.

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 13.01.2015 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 09, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**