

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-55-MA of 2014 (O&M)
Date of decision: February 02, 2016

Sanjeev Ahuja

...Applicant

Versus

Deepanshu Yadav

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajesh Lamba, Advocate
for the applicant.

None for the respondent.

INDERJIT SINGH, J.

Applicant-Sanjeev Ahuja has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Deepanshu Yadav, challenging the impugned judgment dated 12.11.2013 passed by learned Judicial Magistrate Ist Class, Faridabad, 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.

Notice of motion was issued. Learned counsel for the respondent earlier appeared but later on he absented and none appeared on behalf of the respondent, at the time of final arguments.

I have heard learned counsel for the applicant and have

gone through the record.

As per the record, the complainant Sanjeev Ahuja filed a complaint against accused Deepanshu Yadav under Section 138 of the Negotiable Instruments Act, 1881. As per complainant's version, accused had borrowed a friendly loan of ₹4 lacs from the complainant in October 2007 and in discharge of his part liability, he issued two cheques for ₹20,000/- each, which on presentation for encashment were dishonoured with the remarks 'account closed'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 12.11.2013. Learned Magistrate discussed the law in the impugned judgment and held that in the legal notice given by the complainant in the last para, it is stated that 'I, through this notice, hereby call upon you to pay my client a sum of ₹4 lacs within 15 days'. The Court held that it is clear that no demand of the amount of the cheques involved in the present case was made and rather, the demand of entire outstanding amount of ₹4 lacs was made.

The Court below discussed the law as laid down by the Hon'ble Supreme Court in M/s Rahul Builders vs. M/s Arihant Fertilizers & Chemical and another, 2007(4) RCR (Criminal) 973, wherein it is held that since no specific demand was made for the payment of the cheque amount, the said legal notice was defective and did not satisfy the required legal conditions contemplated in

clause (b) of proviso to Section 138 of the NI Act. The Court further held that similar view has also been taken by the Hon'ble Apex Court in the case ***K.R. Judira vs. Dr.G.Adinarayana, 2003(4) RCR (Cr.) 966.***

No other law has been cited by learned counsel for the applicant.

The total cheque amount of two cheques was only ₹40,000/- whereas the case of the complainant is that ₹4 lacs was borrowed by the accused as loan. In the legal notice, the complainant has asked for the total amount of ₹4 lacs, therefore, the legal notice is defective.

In view of the above discussion, I find that the findings given by learned JMIC, Faridabad, in no way, can be held as perverse. The impugned judgment dated 12.11.2013 passed by learned JMIC, Faridabad, 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 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE