IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-557-MA of 2014(O&M)
Date of decision: January 18, 2016

Vipin Mehta

...Applicant

Versus

Ramotar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Akashdeep Singh, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Vipin Mehta has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ramotar, challenging the judgment dated 28.01.2014 passed by learned Judicial Magistrate Ist Class, Bhiwani, whereby accused-respondent was acquitted of the charges.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. The facts of the case have been stated in detail. It is further stated that there is sufficient evidence on record against the respondent, however, the same has not been taken into consideration by learned trial Court. It is also stated that respondent has wrongly and illegally been acquitted by learned trial Court and impugned judgment is liable to be set aside by this Court. It is, therefore, prayed that leave to file the appeal be granted.

As per the record, the complainant Vipin Mehta filed a complaint against accused Ramotar under Section 138 of the Negotiable Instruments Act. As per complainant's version, he was having good relations and utmost faith upon the accused. The accused was in need of money of ₹3 lacs and keeping in view old reations, the complainant gave a sum of ₹3 lacs to the accused as a loan. It is further in the complaint that when the money was demanded back by the complainant, the accused issued cheque No.040903 dated 25.03.2008 for ₹3 lacs drawn on Bank of India, Bhiwani, in favour of the complainant. On presentation of cheque for encashment, it was dishonoured with the remarks 'account closed'. Legal notice was served upon the accused. When the money was not paid, then the complaint was filed.

The complainant produced his evidence. At the close of the complainant's evidence, the statement of the accused was recorded under Section 313 Cr.P.C., wherein he pleaded that his bank account was opened upon the identification of the complainant. During cross-examination of the complainant, the defence side suggested that accused and complainant executed partnership deed regarding business upon the plot of the accused at Delhi and for the purpose of that partnership business, the complainant took six blank cheques from the accused as security and out of those six cheques, one cheque has been misused by the complainant. It is also stated that complainant distributed other cheques to several persons for harassing the accused. The accused also proved from the documents Ex.D1 to D16 that complainant took six blank cheques from him for the purpose of starting partnership business and he misused one of the cheques.

The perusal of the complaint shows that in the complaint, nowhere particulars of the loan have been mentioned, as to on which date, month and year, the loan was given, where and in whose presence it was given, whether it was given by cash or by way of negotiable instrument or whether this amount has been withdrawn from any bank. There is also no documentary evidence on the record to support the version of the complainant of giving loan of ₹3 lacs. During cross-examination, the complainant stated that he himself borrowed ₹3 lacs from one commission agent and advanced the loan to the accused. It is highly improbable that a person will firstly borrow the amount from some other person and then will give it as a loan to other person. Even the commission agent has not been examined. No record of the commission agent has been placed on the record to support the complainant's version. There is no other document to prove the advancement of loan.

During cross-examination, complainant admitted that accused is a hawker in the shop of his brother Hans Raj and he has taken an almirah for doing the business of hawking. The Court held that the conduct of the complainant is not probable that he himself borrowed a sum of ₹3 lacs from one commission agent and would advance to a hawker without execution of any document to secure that amount. There is nothing in the complaint as to on what rate of interest the loan was given. If the complainant had borrowed the amount from the commission agent, then the same would be at some rate of interest. The Court further held that in the facts and circumstances, the presumption under Section 139 of the Negotiable Instruments Act has been rebutted. The complainant's case before learned Magistrate was that he is contractor by profession and he did not keep any record regarding transaction in question. He also admitted that he did not reflect the transaction in question in income tax return.

After going through the impugned judgment passed by learned JMIC, Bhiwani, I find that the findings given by learned Magistrate are correct, as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has not been considered or which material evidence has been misread by the Court below.

In view of the above discussion, I find that the judgment dated 28.01.2014 passed by learned JMIC, Bhiwani, 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.

January 18, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**