

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-673-MA of 2015 (O&M)

Date of decision: May 10, 2016

Karambeer Singh

...Applicant

Versus

Ravinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Satnam Singh Gill, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Karambeer Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ravinder Singh, challenging the impugned judgment dated 11.03.2015 passed by learned Judicial Magistrate Ist Class, Patiala.

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, therefore, prayed that leave to appeal be granted.

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

As per the record, the complainant Karambeer Singh filed a complaint against accused Ravinder Singh under Section 138 of The Negotiable Instruments Act. As per complainant's version, he was

having friendly and visiting relations with the accused and both had mutual faith and understanding upon each other. The accused required ₹1,25,000/- for his urgent domestic needs. The complainant gave the money to the accused in November 2011 in cash at Patiala and accused promised to repay the same within the period of two months. In discharge of his liability, accused issued cheque No.785677 dated 29.01.2013 for ₹1,25,000/-, which on presentation for encashment, was returned back unpaid with the remarks 'Account closed'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1 and closed the evidence. The accused when examined under Section 313 Cr.P.C., he pleaded as under:-

"I am innocent. I have been falsely implicated in present case the complainant is neither holder nor holder in due course in cheque in question. The cheque in question alongwith others cheques were taken by complainant alongwith Karambeer Singh who is brother in law and other persons came to the house of accused and forcibly taken the cheque from my house. An FIR was also got registered against them and I have also intimated to the bank regarding stolen of cheques by the complainant and his brother in law and upon my request the bank has closed my account. I have no outstanding liability or legally enforceable debt towards the complainant. As such there was no occasion for me to submit the instant cheque to the complainant. The body of the cheque is filled with different inks and the same was filed by same person who filled the other cheque no. 785680. The complainant and his brother in law intentionally presented both the cheques in question on the same day i.e 29.01.2013. No amount was ever received by me form the complainant as alleged. No legal notice has been served upon me. The complainant has misused the said cheque. The complainant filed the false complaint to just to grab the easy month form and put pressure to withdraw the said FIR. There are number of criminal cases are pending

against complainant as well as his brother in law Karambeer Singh. I am entitled benefit of acquittal.”

Learned JMIC, Patiala, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 11.03.2015.

From the record, I find that accused examined DW-1 Dr.Inderjit Singh, Handwriting and Fingerprints Expert, who proved his report and deposed that he examined body writings marked D1 and D2 on the cheque of the present case and also on the cheque in another pending complaint titled as 'Sukhwinder Singh vs. Ravinder Singh' and stated that the body of the both the cheques were filled by one and same person. DW-2 Kamaldeep, Addl. Ahlmad brought the summoned record to show presentation of challan in case FIR No.2 dated 01.01.2013 titled as 'State vs. Sukhwinder Singh and produced the certified copy of the FIR Ex.D8. DW-3 Head Constable Avtar Singh brought the summoned record of case FIR No.16 dated 23.01.2014, FIR No.448 dated 12.12.2010, FIR No.55 dated 16.03.2013 and FIR No.2 dated 01.01.2013.

Learned JMIC, Patiala, after considering the evidence, held that the cheque in question is filled with different pen than that of the signatures and further body writing on the cheque in question is similar to the bodywriting on the cheque in case titled as 'Sukhwinder Singh vs. Ravinder Singh' and 'Karambeer Singh vs. Harpreet Singh'. The Court further held that the point to be considered in the present case is whether the complainant could advance a loan to the person

whose wife had got registered a case against him. It is also stated that the dispute had already arisen on 11.10.2012 and an application was filed by the wife of the accused against the complainant and others. Once the dispute has arisen between the parties, there would be no occasion for the accused to borrow an amount from complainant and vice-versa for the complainant to advance the money to the accused. The version of the complainant that accused issued cheque dated 29.01.2013 to discharge legal liability does not seem to be probable. As per the evidence, the FIR regarding theft of cheques have already been registered before the issuance of the cheque, which also makes the version of the complainant non-reliable. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by producing defence evidence.

In view of the these facts, 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 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.

In view of the above discussion, I find that the findings have been given by learned JMIC, Patiala, while appreciating the evidence in right perspective. The impugned judgment dated 11.03.2015 passed by learned JMIC, Patiala, 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 10, 2016
Vgulati

(INDERJIT SINGH)
JUDGE