IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-828-MA of 2014 (O&M)
Date of decision: November 11, 2016

Pardeep Singh

...Applicant

Versus

Baljinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mohd. Yusuf, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Pardeep Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Baljinder Singh, challenging the impugned judgment dated 29.03.2014 passed by learned Judicial Magistrate Ist Class, Malerkotla, vide which 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 further stated that learned trial court has wrongly and illegally disbelieved the evidence led by the applicant. The perusal of the judgment, prima facie, shows that the same suffers from material irregularity and illegalities. The reasons given by learned Magistrate are based upon surmises and conjectures. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Pardeep Singh filed a complaint against accused Baljinder Singh under Section 138 of the Negotiable Instruments Act. As per averments of the complaint, accused borrowed ₹6 lakhs from the complainant and agreed to return the same and in order to discharge the liability, the accused issued cheque bearing No.646738 dated 23.10.2009 for ₹6 lakhs in favour of the complainant, which on presentation before the bank for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused in his statement under Section 313 Cr.P.C. pleaded false implication and he stated that he has nothing to do with this complaint and the complainant is deposing falsely against him. In defence, accused examined DW-1 Anoop Kumar, who proved certified copy of account statement Ex.D1 and examined DW-2 Jasveer Singh.

Learned JMIC, Malerkotla, after appreciating the evidence, acquitted the accused-respondent.

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

The perusal of the record firstly shows that in the complaint, no date, month or year has been mentioned as to when the loan was borrowed by the accused from the complainant. Even in the legal notice, no such date, month and year has been mentioned regarding advancing the loan. In cross-examination, the complainant gave the date as 23.10.2009 and the cheque issuance date is also 23.10.2009. Therefore, even if it is taken as it is, then the cheque in question is given as security to the complainant.

Further, I find that there is no documentary evidence on the record to show this loan transaction. No particulars have been mentioned in the complaint that at which place and in whose presence the amount has been advanced. There is nothing on the record regarding capacity of the complainant to advance such a huge loan. Furthermore, the complainant in cross-examination stated that he knows the accused only because of the fact that he is also selling his agricultural produce at the shop of same commission agent and he does not know any other relative of the accused. It looks improbable that the complainant, who is not knowing the accused, would advance such a huge amount of ₹6 lakhs without getting executed any security document or obtaining receipt from the accused. He also admitted that the loan was given on 23.10.2009 and at that time the agricultural produce of the accused was also ready for sale. He further admitted that at that time there was a scheme of government that all the payments made by the commission agents are to be made only through cheque. DW-1 Anoop Kumar stated that Jasveer Singh introduced accused Baljinder Singh to their bank, for the purpose of opening account. Thereafter, Jasveer Singh appeared as DW 2 and stated that as per his account for the year 2009-2010, an amount of ₹1,46,671.50 is outstanding towards the complainant Pardeep Singh. The case of the accused is that the cheque given to the commission agent has been misused by the complainant.

In view of the above discussion, I find that the loan transaction and the capacity of the complainant to lend the amount has not been proved. No particulars of the advancement of loan have been mentioned in the complaint. No date has been mentioned as to when the loan was demanded back. The cheque in question is dated 23.10.2009 whereas the loan was also advanced on the same date, which means the cheque was given as security but it is not the case of the complainant in the complaint. No security document has been obtained from the accused at the time of advancing the loan. Therefore, the presumption under Section 139 of the Negotiable Instruments Act has been rebutted.

The findings have been given by learned JMIC, Malerkotla, while appreciating the evidence in right perspective. In no way, the findings can be held as perverse. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

In view of the above discussion, I find that the impugned judgment dated 29.03.2014 passed by learned JMIC, Malerkotla, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

November 11, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**