

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-85-MA of 2014 (O&M)
Date of decision: March 30, 2016

Vikas Sethi

...Applicant

Versus

Sumit Bhasin

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

INDERJIT SINGH, J.

Applicant-Vikas Sethi has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sumit Bhasin, challenging the impugned judgment dated 04.12.2013 passed by learned Judicial Magistrate Ist Class, Karnal, whereby 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 given benefit of doubt to the respondent-accused just on the ground that the prosecution has not been able to bring home the guilt of the accused beyond shadow of reasonable doubt. 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 Vikas Sethi filed a complaint against accused Sumit Bhasin under Section 138 of the Negotiable Instruments Act. As per complainant's version, between the period January 2010 to March 2011, accused borrowed an amount of ₹4 lacs from the complainant as a friendly loan in four transactions and assured that he would return the aforesaid amount in August 2011. In discharge of this liability, the accused issued cheque bearing No.397314 dated 25.08.2011 for ₹4 lacs in favour of the complainant, 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 produced the evidence. The accused raised probable defence that he never borrowed the amount of ₹4 lacs from the complainant as friendly loan and there was no occasion for him to issue cheque for any legally enforceable debt/liability. He further stated that the complainant did not even remember the dates on which he had lent the amount to the accused as a friendly loan. Accused stated that he borrowed an amount of ₹10,000/- and handed over a blank cheque as a security to the complainant. The complainant misused the blank cheque and filled up the columns of the same to file a false complaint against him.

Learned JMJC, Karnal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated

04.12.2013.

I have gone through the judgment dated 04.12.2013 passed by learned JMJC, Karnal. I find that 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. In the present case, the accused gave reply to the legal notice served upon him prior to the filing of the present complaint, which has been placed on the file as Ex.D1 and Ex.C5. In the said reply, the accused has specifically mentioned that he had borrowed an amount of ₹10,000/- from complainant and not ₹4 lacs as alleged by the complainant and the cheque in question was handed over by him to the complainant as a blank security cheque at the time he borrowed an amount of ₹10,000/- from him.

The Court held that under these peculiar facts and circumstances of the case, it was incumbent on the complainant to furnish the details of the amount and respective dates on which he lent money as a friendly loan to the accused in his affidavit tendered in evidence. The Court also held that the complainant was well aware of the defence of the accused but he has not given any particulars regarding the loan transactions.

I have also gone through the complaint and find that in the complaint, a general plea has been taken that from January 2010 to March 2011, accused borrowed an amount of ₹4 lacs from the complainant in four transactions. There is nothing in the complaint or in the evidence as to on which date and in which month and year,

what amount was given to the accused as loan. It was necessary, specifically, when the accused is alleging that he has taken loan of ₹10,000/- only. There is no document on record to show this loan transaction.

Even the Court discussed that cheque in question has been filled up by using three different pens. One pen has been used for signing the cheque, other pen has been used for putting the date on the cheque and third pen has been used for filling the amount in words as well as in figure. This evidence that three pens have been used also supports and corroborates the version of the accused that the cheque was given as a blank security cheque.

Further, it is in the cross-examination of the complainant that earlier he used to give money to various persons. If that is the case, then the complainant might be keeping some account with him as to when the amount was given and how much amount was given and to whom. Otherwise also, there is no cogent evidence on the record to show as to why a huge amount of ₹4 lacs was given without getting any receipt or getting executed any security document i.e. pronote etc. from the accused. There is also nothing on the record to show that from where ₹4 lacs was withdrawn and paid to the accused.

Keeping in view the above facts and circumstances, I find that the probable defence raised by the accused is supported and corroborated from the cross-examination of the witnesses and by defence evidence. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. The findings

given by learned JMIC, Karnal, in no way, can be held as perverse. The findings have been given while appreciating the evidence in right perspective. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court. The impugned judgment dated 04.12.2013 passed by learned JMIC, Karnal , 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.

March 30, 2016
Vgulati

(INDERJIT SINGH)
JUDGE