

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-968-MA of 2015 (O&M)

Date of decision: May 03, 2016

Punit Kumar

...Applicant

Versus

Mohan Lal (Binder)

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

INDERJIT SINGH, J.

Applicant-Punit Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mohan Lal (Binder), challenging the impugned judgment dated 24.03.2015 passed by learned Judicial Magistrate 1st Class, Chandigarh, 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. The applicant has mentioned the facts in detail. It is also stated in the application that learned trial Court has wrongly and illegally disbelieved the evidence led by the applicant, though the applicant has completely proved his case against the respondent. 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 Punit Kumar filed a complaint against Mohan Lal (Binder) under Section 138 of The Negotiable Instruments Act. As per complainant's version, he advanced friendly loan of ₹60,000/- on 03.07.2013 to the accused. In order to discharge his legal liability towards said loan, the accused issued post dated cheque No.813469 dated 18.07.2013 for ₹60,000/-, which on presentation for encashment, was returned back unpaid with the remarks 'funds insufficient'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Chandigarh, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 24.03.2015.

From the record, I find that the complainant examined himself as CW-1 and in his cross-examination, he stated that he has been working as Mechanic of air-conditioners from his house. He is not having any shop or workshop qua his aforesaid work. He has been earning approximately ₹10,000/- per month and he is not an income tax assessee. He further stated in cross-examination that he is having 8 acres of agricultural land. He has filed four complaints under Section 138 of the Negotiable Instruments act. He has not obtained any interest from the accused against the said loan. He also stated that Sh.Ram Kumar Walia is his paternal uncle, who is not doing any business. The complainant in cross-examination further

deposed that the accused is neither known to him nor having any relationship with him. He is not aware about the native place and family members of the accused. He has advanced the said loan at his residence and he is not aware of the exact date of alleged advancement. He is not having any bank statement qua the alleged loan transaction. None else was present at the time of advancement. On the other hand, the accused denied all the allegations and deposed that the complainant is neither known to him nor having any relations with him. He met the complainant on behalf of Sh.Ram Kumar Walia at Government Press, Sector-18, where he was working as Vendor. He obtained ₹40,000/- from Sh.Ram Kumar Walia, who handed over ₹35,000/- as loan and deducted ₹5000/- qua file charges. Accused further deposed that he had repaid the entire loan amount to Sh.Ram Kumar Walia in installments of ₹2000/- each in the year 2012. He also deposed that the cheque in question was handed over blank to Sh.Ram Kumar Walia and the complainant misused the said cheque in connivance with Sh.Ram Kumar Walia.

Accused also examined DW-1 Jaswant Singh, DW-2 Madan Lal, DW-3 Puran Singh and another Jaswant Singh as DW-4. All these DWs deposed regarding obtaining loan from Ram Kumar Walia. They also deposed that complainant Punit Kumar is nephew of Ram Kumar Walia and used to collect installments on his behalf. All these DWs have supported the defence version taken by the accused in this case.

I have gone through the judgment dated 24.03.2015

passed by learned JMIC, Chandigarh. 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. 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.

Learned Magistrate, after going through the evidence on record held that when the complainant admits that he has no friendly relations with the accused, then why this amount of ₹60,000/- has been given without getting executed any security document. There is nothing on the record to show any particulars of loan. No document is there to show the loan transaction between the parties. The probable defence raised by the accused has been duly corroborate by the cross-examination of the complainant as well as from the statements of DWs.

In view of the probable defence, which is supported and corroborated, I find that the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused.

In view of the above discussion, I find that the findings have been given by learned JMIC, Chandigarh, while appreciating the evidence in right perspective. The impugned judgment dated 24.03.2015 passed by learned JMIC, Chandigarh, 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 03, 2016
Vgulati

(INDERJIT SINGH)
JUDGE