IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-985-MA-2015
Date of Decision: 02.12.2016

Parveen Mehta

... Applicant

Versus

Chand Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Veneet Sharma, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant-Parveen Mehta has filed this application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') seeking permission for leave to appeal against respondent-Chand Sharma, challenging the impugned judgment dated 16.04.2015 passed by learned Judicial Magistrate Ist Class, Amritsar, in criminal complaint No.20402 dated 29.02.2012, titled as 'Parveen Mehta vs. Chand Sharma', under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act'), vide which the respondent-accused 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 the impugned judgment passed by learned Judicial Magistrate Ist Class, Amritsar, acquitting the respondent under Section 138 of the N.I.Act, suffers from illegality and irregularity and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

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

From the record, I find that applicant-complainant, Parveen Mehta filed a complaint against respondent-accused, Chand Sharma, under Section 138 of the N.I.Act. It is mainly stated in the complaint that the respondent obtained a friendly loan of ₹6,40,000/- from the complainant and in discharge of part payment of his legal debt and liability, the respondent issued a cheque bearing No.834195 dated 23.01.2012 for a sum of ₹2,60,000/-, which on presentation for encashment was dishonoured with remarks **"Account Closed"**. Legal notice was issued to the respondent and when the payment was not made, the complainant filed the complaint.

In support of his case, the complainant has examined himself as CW 1.

On the other hand, the respondent has examined DW 1 Inderpreet Singh, Ahlmad, who proved copies of complaints filed by the present applicant-complainant as Ex.D-1 to D-9, DW 2 Smt. Mohini Devi, Ahlmad, who proved the copies of complaints filed by the applicant-complainant and cheques as Ex.D-11 to Ex.D-28, DW 3 Aparna, Clerk, who proved the copies of complaints filed by the applicant and cheques as Ex.D-29 to D-58. The respondent has examined himself as DW 4 and supported his defence version. The case of the respondent is that he borrowed a loan of ₹5,000/- from the complainant on interest @ 10% per annum. At the time of giving the amount, the complainant took three blank signed cheques of the respondent as security and the respondent repaid the said amount of ₹5,000/- alongwith interest, however, the complainant did not return the said blank signed cheques and misused one of the same by filling an amount of ₹2,50,000/-.

Learned Judicial Magistrate Ist Class, Amritsar, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 16.04.2015.

I have perused the impugned judgment dated 16.04.2015 passed by learned Judicial Magistrate Ist Class, Amritsar. The same has been passed after appreciating the evidence in right perspective. At the time of arguments, nothing has been pointed out as to how the findings given by learned trial Court are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the learned Court below. Nothing has been pointed out as to what illegality has been committed by the court below while acquitting the accused.

Perusal of the record shows that no date, month or year has been mentioned as to when huge amount of ₹6,40,000/- was advanced to the respondent. Even the date has not been mentioned as to when the applicant demanded the loan back. It is also not mentioned as to whether loan was given in cash or by way of cheque and at which place and in whose presence, loan was given. The complainant has also not produced any document on record to prove the loan transaction. Even no security document of any type has been taken from the respondent. Furthermore, the version of complainant also looks improbable that he was not maintaining any account. The trial Court has noted down in the impugned judgment that total cheque amounts relating to all complaints filed by the complainant come to ₹1,31,10,000/-. The trial Court has discussed the amount of cheque and amount of loan given to 32 persons, as proved by the witnesses examined by the respondent, regarding which the complainant has filed the complaints. Therefore, version of the complainant that it was a friendly loan, cannot be believed. For granting loan of such a huge amount to more than 30 persons without maintaining any record and without obtaining any security document, itself, supports the version of the respondent. The defence version is duly supported by the evidence led by the respondent and complainant also. It looks that the complainant has misused the cheques of various persons and further filling huge amounts, he has filed complaints and thereby harassed the innocent persons. The evidence produced on record shows that case of the complainant is improbable and *prima facie* looks false.

Therefore, from the above, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) Cr.P.C., the same is dismissed.

02.12.2016 **(INDERJIT SINGH)**
parveen kumar **JUDGE**

Note: Whether speaking/reasoned : Yes
Whether reportable : No