

CRM-A-896-MA-2013

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-896-MA-2013 (O & M)
Date of Decision: 07.02.2017

Pankaj Bhardwaj

... Applicant-appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Shiv Charan Bhola, Advocate for
the applicant-appellant.

Mr. B.S.Virk, DAG, Haryana.

Mr. Anil Kumar Rana, Advocate for
Mr. Lokesh Singhal, Advocate,
for respondent Nos.2 and 3.

INDERJIT SINGH, J.

Applicant-Pankaj Bhardwaj 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 respondents-State of Haryana, Deepak Khandelwal and Dinesh Khandelwal, challenging the impugned judgment dated 06.08.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon, in criminal complaint No.654 of 2007, titled as 'Mr. Pankaj Bhardwaj vs. Mr. Deepak Khandelwal and another', filed under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act') read with Section 420 of the Indian Penal Code (for brevity, 'IPC') vide which the private respondents-accused

CRM-A-896-MA-2013

were acquitted.

Notice of motion was issued in this case. Learned State counsel put in appearance on behalf of respondent No.1-State and respondent Nos.2 and 3 put in appearance through their counsel. They contested this application.

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, Gurgaon, acquitting the private respondents under Section 138 of the N.I.Act, is based on surmises and conjectures and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal may be granted.

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

From the record, I find that applicant-complainant, Pankaj Bhardwaj filed a complaint against private respondents-accused under Section 138 of the N.I.Act read with Section 420 IPC. As per the case of the complainant, he entered into agreement to sell with the accused persons qua his land in village Berka, Tehsil and District Alwar, for a total consideration of ₹71,83,460/-, vide agreement to sell dated 18.07.2007. The accused persons paid ₹1,00,000/- as token money and they issued two cheques for a sum of ₹35,41,730/- each both dated 24.08.2007 bearing Nos.574302 and 235818, respectively. When cheque No.574302 was presented for encashment, the same has been

CRM-A-896-MA-2013

received back with the endorsement "A/c Number Wrong' and cheque No.235818 has been received back with the endorsement 'Drawers Signature Differs" and "Funds Insufficient". Legal notice was issued to the accused and when the payment was not made, the complainant filed the complaint.

Learned Judicial Magistrate Ist Class, Gurgaon, after appreciating the evidence, acquitted the private respondents-accused vide impugned judgment dated 06.08.2012.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

From the findings given by learned Magistrate, I find that as per the version of complainant himself, only ₹1 lakh as earnest money was given by the accused to the complainant, which is not returned to the accused. Secondly, it is in the evidence that the agricultural land for which the agreement to sell was executed, has already been sold by the complainant to some other persons. These cheques are stated to be for the sale consideration of the agricultural land. When no sale deed has been executed and the sale consideration was to be paid at the time of execution of the sale deed as per the case of the complainant himself, then there was no liability to pay more than ₹70 lakhs to the complainant without executing the sale deed. Since the complainant has already sold the property, therefore, he could not sell the property now to the accused if the cheques are encashed. Therefore, the cheques are only security cheques taken in advance for the sale consideration of the agricultural

CRM-A-896-MA-2013

land. When these cheques were given at that time, there was no liability to pay the sale consideration to the complainant. The liability would have arisen at the time of execution of the sale deed. But in this case, neither the sale deed has been executed nor sale deed now could be executed as the property has been sold by the complainant to some other persons. All these facts as well as evidence has been rightly appreciated by the learned Magistrate.

The findings have been given by learned Magistrate while appreciating the evidence in right perspective. In no way, the findings can be held as 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 Court below. Nothing has been pointed out as to how the findings are illegal or against the law.

From the above discussion, 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.

07.02.2017

parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No