IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1678-MA of 2016 (O&M)
Date of decision: September 20, 2017

Satnam Singh

...Applicant

Versus

Baldev Raj

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.C.Shahpuri, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Satnam Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Shri Baldev Raj, challenging the impugned judgment dated 01.08.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 applicant will suffer irreparable injustice, in case the leave is not granted by this Court. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Satnam Singh filed a complaint against accused Shri Baldev Raj under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused was in visiting term with the complainant and since accused was in dire need of money for his personal use, the accused requested the complainant to advance him an amount of ₹1.50 lakhs. The complainant advanced an amount of ₹1.50 lakhs to the accused on 10.12.2013. In discharge of his existing liability towards the complainant, the accused issued post dated cheque bearing No.394553 dated 31.12.2013 in the sum of ₹1.50 lakhs in favour of the complainant, which on presentation for encashment was returned back dishonoured with the remarks "Funds Insufficient". Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 01.08.2016.

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

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

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. 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.

From the record, I find that in the present case, the accused admitted his signatures on the cheque. He took the defence that he has already disclosed his plea of defence at the time of service of notice of accusation. In addition, the accused stated that he has financed a tractor Marka Mahindra Gujrat Shatiman 35 Hrs from Shri Ram Finance through the complainant and in this regard the complainant obtained his signatures on various documents. He further stated that the complainant had also kept his whole cheque book and maintained that he visited the Shri Ram Finance Company in the evening at about 6.00 p.m. and the said firm had kept his four cheques and his rest of the cheques have been kept by the complainant. The accused further stated that the agreement of his tractor was for ₹4.50 lakhs. He further stated that that the complainant had sanctioned the loan of ₹5 lakhs and in addition to this the complainant had received an amount of ₹10,000/- for the first time, then the complainant had received an amount of ₹11,000/- and thereafter the complainant had received an amount of Rs.5,000/- from him. He further stated that the complainant had received an amount of ₹3.20 laks from Shri Ram Finance Company and he had given an amount of ₹1.80 lakhs to the complainant. The accused further stated that the complainant had also received an amount of ₹50,000/- illegally and had also kept his RC, other cheques. He further alleged that the complainant has misused the cheque in question. The accused also examined DW-1 Shri Dinesh Rana, Field Officer, Shri Ram Finance Company, Karnal, DW-2 Shri Namneet Singh, Senior Produce Executive, Shri Ram Transport Finance Company Ltd. and got himself examined as DW-3.

In the cross-examination, the complainant admitted that accused had purchased one Mahindra tractor from his showroom and that the complainant was running an agency of Mahindra tractors earlier. Dinesh Rana, who is an officer of Shri Ram Finance company, Karnal, has stated that the loan file of the accused was prepared by him and the complainant was present with the accused at the time of sanctioning of loan of the accused. Learned trial Court held that these facts support the defence of the accused that blank signed cheques of the accused may have been retained by the complainant who himself was running the agency of Mahindra tractors. It is not the case of the complainant that the alleged cheque amount of ₹1.50 lakhs was given by the complainant to the accused for purchase of the tractor itself. Rather, the complainant has stated in his cross-examination that he did not know the purpose for which the complainant had borrowed the alleged cheque amount from him.

From the perusal of the evidence on record, I find that the defence version is probable. It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused by raising probable defence. The defence raised by the accused in this case is probable one and duly supported from the case of the complainant as well as from the defence evidence. Furthermore, there is no document on the record to show the loan transaction. There is no explanation as to why the complainant has not obtained the receipt of this amount. No security document was obtained while advancing the loan of ₹1.50 lakhs. Again, when the accused has transaction with the complainant, who being the dealer of Mahindra Company has delivered the tractor to the accused by getting it financed to the extent of ₹3.20 lakhs from Shri Ram Finance Company, then why the complainant would lend loan to the accused without any document. Furthermore, no account statement of any type nor any income tax return has been produced on the record to show this loan transaction.

The perusal of the judgment passed by the Court below shows that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 01.08.2016 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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.

September 20, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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