IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-2277-MA of 2016 (O&M)
Date of decision: March 08, 2017

Parvesh Kumar Malik

...Applicant

Versus

Sh.Harsh Kumar @ Vinay Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Jetley, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Parvesh Kumar Malik has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Harsh Kumar @ Vinay Kumar, challenging the judgment dated 03.10.2016 passed by learned Judicial Magistrate Ist Class, Ambala, 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 Court below has not taken into consideration the documentary and oral evidence led by the applicant during trial. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Parvesh Kumar Malik filed a complaint against accused Harsh Kumar @ Vinay Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused has family relations with him and has obtained a friendly loan and accused issued a cheque bearing No.221520 dated 15.04.2015 of ₹50,000/- in discharge of legal liability, which on presentation for encashment, was returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Ambala, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 03.10.2016.

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.

From the record, I find that the accused has admitted his signatures on the cheque in dispute. The accused also tendered into evidence documents Ex.D1 to D3. The defence taken by the accused is that there is no liability against the cheque in question as no loan was ever taken by him. It is also stated that he took ₹50,000/- in the year 2011, which has been repaid by him. The accused gave two cheques to the complainant out of which, one has been misused by him.

CW-1 in cross-examination has stated that accused took the money on 30.12.2014. He also admitted that the accused gave two cheques to him on 30.12.2014. He also stated that he gave the money to accused after taking it from one of his friends namely Sukhdev Singh, who withdrew it from his account. The Court held that this witness Sukhdev Singh has not been examined by the complainant.

The perusal of the record shows that no date, month and year has been mentioned in the complaint as to when the loan was given to the accused. The date has been deposed in the evidence and not mentioned in the complaint. There is also nothing as to when the loan was demanded back. There are also no particulars that in whose presence the loan was given and at which place and also nothing on the record to show the mode of payment of loan amount to the accused. There is no document on record to show the loan transaction. The complainant in cross-examination has admitted his writing on document Ex.D1. He also admitted that he received money from 27.06.2011 to 09.12.2011. He also admitted his handwriting on page 1-10 of Ex.D1. The Court below held that perusal of document Ex.D1 shows that accused paid a total of ₹50,500/- to the complainant. The complainant also admitted that accused gave an application to CM window against the complainant, copy of which is Ex.D3. He also admitted that he received an amount of ₹5000/- from the accused during 06.07.2014 to 04.09.2014.

Learned Magistrate held that payment of ₹50,000/- to the accused has not been proved on the record. The perusal of the record shows that the defence raised by the accused is supported and corroborated from the cross-examination of the complainant and also from the documents Ex.D1 to D3. The accused raised a probable defence. Therefore, presumption under Section 138 of the Negotiable Instruments Act has been duly rebutted. As already discussed, the complainant has not led any cogent evidence to prove the loan transaction. No particulars have been given as to when the loan was given nor there is any document to support the loan transaction.

The perusal of the findings given by learned Magistrate shows that the findings have been given as per evidence and law. Nothing has been argued 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 given by the Court below are perverse or against the evidence or law. The findings have been given after appreciating the evidence in right perspective.

In view of the above discussion, I find that the impugned judgment dated 03.10.2016 passed by learned JMIC, Ambala, 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.

March 08, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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