IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-77-MA-2016 (O & M)
Date of Decision: 08.02.2017

Naresh Verma

... Applicant

Versus

Dhilon Tech.

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Rajesh Goyal, Advocate for the applicant.

INDERJIT SINGH, J.

CRM-1610-2016

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 11 days in filing the application seeking leave to appeal, is condoned.

CRM-A-77-MA-2016

Applicant-Naresh Verma 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-Dhilon Tech., challenging the impugned judgment dated 29.10.2015 passed by learned Judicial Magistrate Ist Class, Panipat, in criminal complaint No.53 of 2012, titled as 'Naresh Verma vs. Dhilon Tech.', filed 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, Panipat, acquitting the respondent 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 be granted.

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

From the record, I find that applicant-complainant, Naresh Verma filed a complaint against respondent-accused under Section 138 of the N.I.Act. It is mainly stated in the complaint that in the month of August 2011, the accused requested the complainant and asked for an amount to the tune of ₹3,00,000/- for his urgent business needs and the complainant advanced a loan to the tune of ₹3 lakhs to the accused. In order to discharge the said liability, the accused issued a cheque bearing No.440293 dated 10.10.2011, amounting to ₹3 lakhs in favour of the complainant. When the complainant presented the said cheque for encashment, it was dishonoured with remarks 'Account Closed”. Thereafter, legal notice was issued to the accused and when the payment was not made, the complainant filed the complaint.

Learned Judicial Magistrate Ist Class, Panipat, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 29.10.2015.

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

After hearing learned counsel for the applicant and after going through the record, especially the judgment passed by the trial Court, I find that 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. At the time of arguments, nothing has been pointed out as to how the findings are illegal or against the 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.

The case of accused before the trial Court is that in fact, the complainant assured him to provide government service to his younger brother and demanded ₹5 lakhs and the matter was settled in ₹4.5 lakhs. In pursuance to the said deal, ₹1.5 lakhs in cash were paid to the complainant in advance and for the remaining amount, the complainant retained a blank signed cheque as security. It was stipulated that when the appointment letter will be given to the younger brother of the accused, the remaining amount of ₹3 lakhs will be paid. However, the complainant could not arrange the government service for the younger brother of the accused and when the accused demanded the cheque back from the complainant, he misused the same.

Perusal of the record shows that the complainant is in the govt. service and is a teacher. In the cross-examination, the complainant stated that he is a teacher since 2009. He deposed that except the earnings from the said job, he is having no other means of income. He also deposed that his salary comes into an account with State Bank, Panipat. He undertook to produce the photocopy of the pass-book of the salary account on record, but he failed to produce the same. Learned Magistrate held that statement of account of the complainant pertaining to HDFC Bank which has been exhibited by the defence as Ex.D-1, has been produced. A perusal of Ex.D-1 shows that in the month of June 2011, the complainant himself raised a loan of ₹2.5 lakhs. If the complainant himself obtained the loan of ₹2.5 lakhs from the bank two months earlier this transaction, then advancing the loan of ₹3 lakhs to the accused by the complainant without interest creates a reasonable doubt in the version of the complainant. Furthermore, the complainant has to pay interest to the bank on the loan of ₹2.5 lakhs, however, he has given the money to the accused without interest, which also looks improbable. Furthermore, if the complainant was in the need of money two months earlier and took a loan of ₹2.5 lakhs, then as to why he advanced the amount to the accused. Moreover, he has not shown his sufficient means. Otherwise also, the natural conduct of a person is to firstly return the loan amount to the bank instead of giving it to some other person. There is no other record of any type to prove this loan transaction. No security document has been taken from the accused at the time of advancing the loan. Furthermore, the accused is a sole proprietorship firm i.e. Dhilon Tech. and if the firm will use that money, it will earn profit and why the complainant has given money without interest to it. Furthermore, no date has been mentioned in the complaint on which the amount has been given to the accused. Furthermore, it is in the complaint that the accused assured the complainant to return the said amount within a period of 04 months, but the cheque is stated to have been issued by the accused in less than two months.

Keeping in view the above facts, I find that the accused has raised probable defence which is corroborated from the case of complainant itself and the presumption under Section 139 of the N.I.Act has been duly rebutted. 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.

08.02.2017 **(INDERJIT SINGH)**
parveen kumar **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No