IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-380-MA-2014 (O & M)
Date of Decision: 05.04.2017

Sanjay Kumar

... Applicant

Versus

Hukam Chand

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Arun Nehra, Advocate,
for the applicant.

Mr. Sanjay Verma, Advocate,
for the respondent.

INDERJIT SINGH, J.

Applicant-Sanjay Kumar 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-Hukam Chand, challenging the judgment dated 11.12.2013 passed by learned Judicial Magistrate Ist Class, Sub Division, Bilaspur, in criminal complaint No.194-2 dated 27.02.2010, titled as 'Sanjay Kumar vs. Hukam Chand, filed under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I. Act'), vide which the 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 findings recorded by learned trial Court are perverse and contrary to the settled position of law and thus the same deserve to be set aside. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued. Respondent put in appearance through his counsel and contested this application.

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

From the record, I find that applicant-complainant filed a complaint under Section 138 of the N.I. Act against respondent-Hukam Chand. As per the allegations contained in the complaint, the accused had cordial relations with the complainant and was on visiting terms with the complainant. The accused was in the urgent need of money in the month of October, 2008. The complainant advanced an amount of ₹1,50,000/- to the accused on 31.10.2008 and again in the month of March, 2009, the complainant further paid an amount of ₹50,000/- to the accused on 04.03.2009 and again an amount of ₹1,00,000/- was paid to the accused on 12.03.2009. Thus, in total, a sum of ₹3,00,000/- was paid to the accused by the complainant on various dates. The accused again requested the complainant to pay an amount of ₹3,00,000/- and the complainant believing upon the version of accused further paid an amount of ₹3,00,000/- to the accused in the month of July, 2009. The accused in discharge of his existing liability towards the complainant issued various post dated cheques drawn on Punjab National Bank and State Bank of India and assured the complainant that the cheques issued by him will surely be encashed as and when presented after the due date. The accused issued a cheque No.682182 dated 21.12.2009 for a sum of ₹2,50,000/- which was returned back unpaid on its presentation with the remarks "funds insufficient". It is also stated that the intention of the accused from the very beginning was dishonest and malafide to usurp the amount of complainant. A legal notice was given to the accused to which a false and fictitious reply was given. The accused moved application against the complainant in the police station in order to grab the amount of the complainant and also filed a false and bogus civil suit for which he had no right to do so. It is further stated that the complainant also presented another post dated cheque bearing No.004568 dated 18.12.2009 for a sum of ₹1,50,000/- drawn on State Bank of India, which was handed over to the complainant by the accused, was also dishonoured. A notice was served to the accused and in reply thereto, it was disclosed by the accused that as a matter of fact the abovesaid cheque did not belong to him and the same belongs to the account of his son Jitender Kumar. The complainant made inquiry from the bank and came to know that the abovesaid account is running in the name of Jitender Kumar. The complainant requested the accused on numerous times to make the payment, but of no avail. Hence, the complaint was filed.

On finding a prima facie case, the accused was summoned under Section 138 of the N.I. Act.

Thereafter, notice of accusation was served upon accused, to which he pleaded not guilty and claimed trial. In support of his case, the complainant examined as many as three witness including himself.

In his statement recorded under Section 313 Cr.P.C., the accused denied all the allegations levelled against him. In his defence, the accused examined Ashok Kumar as DW 1, Head Constable Daulat Ram as

DW 2, Ashwani Kumar, Clerk, Central Cooperative Bank, Yamuna Nagar as DW 3 and himself appeared into the witness-box as DW 4.

Learned Judicial Magistrate Ist Class, Bilaspur, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 11.12.2013.

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

From the record, I find that findings given by the trial Court are correct, as per evidence and law. There is nothing on record to show that these findings are perverse or against the evidence. At the time of arguments, nothing has been pointed out as to how the findings are perverse 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.

Perusal of the record shows that the trial Court discussed that an amount of ₹6 lakhs was borrowed by the accused on different dates. However, it cannot be believed that a person who is earning a sum of ₹20,000/- per month, can advance such a huge amount to other person. The trial Court also discussed the cross-examination of the complainant in which he stated that he files Income Tax Return, but in the statement for the year 2008-09, he did not show any record regarding giving any money on credit. The trial Court further held that the complainant stated that he gave money to the accused after withdrawing from the Cooperative Bank, but there is no proof to that effect, nor there is any evidence that the amount has been handed over to the accused. The trial Court further held that it is the defence of the accused that he had taken Rs.1 lakh which was already paid to the complainant and in lieu of that loan amount, the accused has given blank cheques bearing No.004568 to 004575 and the complainant had also taken two cheques of his son namely Jitender Kumar bearing Nos.682181 to 682200. The complainant had also taken blank signed cheques bearing Nos.133049 to 133050 of Jitender Kumar and three blank signed stamp papers by accused and original sale deed in the name of his wife as a security and all these cheques and sale deeds were not returned by the complainant despite making payment of entire loan amount to the accused. The trial Court further held that it has come in evidence that the accused had also filed a civil suit against the complainant for returning of all these documents to him, copy of which is Ex.D-7 on record. It has also come in evidence that an application for returning of all these documents has also been made to the police against the complainant and the police had conducted an enquiry in this case and in the inquiry, the police has recorded statements of accused and various other persons which are Ex.D2/1 to Ex.D2/4 on record. There is also report of SHO which is Ex.D 2/5 on record. It has also come in defence evidence as well as in the inquiry conducted by the police that the complainant had taken the signatures of the accused on blank pronote as well as on cheques in question and this fact is also proved from the statement of DW 1 Ashok Kumar.

In view of the evidence, I find that the accused has raised a probable defence which is supported and corroborated by the cross-examination of the complainant as well as defence evidence. At the time of arguments, it is admitted that before the date of cheque i.e. 21.12.2009, the accused had already made the complaint to the senior police officers on 18.12.2009. In no way, it can be held that this version has been concocted by the accused. The accused has raised a probable defence and rebutted the presumption under Section 139 of the N.I. Act. There is nothing on record to prove the loan transaction nor there is any document to show that the amount has been given to the accused.

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.

05.04.2017 **(INDERJIT SINGH)**
parveen kumar **JUDGE**

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