IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-49-MA of 2017 (O&M)
Date of decision: December 01, 2017

M/s A Pee Communication

...Applicant

Versus

Satish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Gopera, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-M/s A. Pee Communication has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Satish Kumar, challenging the impugned judgment dated 01.12.2016 passed by learned Judicial Magistrate Ist Class, Kurukshetra, 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant M/s A. Pee Communication filed a complaint against accused Satish Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused borrowed a sum of ₹1,45,000/- and in lieu of the payment of the said amount, issued a cheque bearing No.085042 dated 30.07.2012 for discharge of his legal liability in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'insufficient funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

After the closure of complainant evidence, the accused was examined under Section 313 Cr.P.C. He denied all the allegations levelled against him and pleaded false implication. The accused took the defence that he was employed with the firm of complainant as Direct Sale Executive. Phool Singh and Vinay Kumar were also employed along with him. The accused took signed cheques as security from them. He further pleaded that despite their work being satisfactory, the complainant fired them without giving their salary and the complainant misused his cheque. He also pleaded that he never took a loan of ₹1,45,000/- from the complainant.

Learned JMIC, Kurukshetra, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 01.12.2016.

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 no date, month and year has been mentioned as to when the loan in question has been given to the accused by the complainant-firm. Complainant has not given the money in personal capacity. Rather, the firm has given the money. A firm always maintains an account and also pays income tax etc. as per law but no documentary evidence has been produced including the account books to show payment of loan. Even salary record of the accused has not been produced. It is admitted fact that accused was employed in the complainant-firm. If any amount would have been advanced by the complainant to the accused as loan, then it might have been entered in the account books of the complainant and part of the salary might have been deducted as installment of the loan but no such document has been produced. There is no document on the record to show the loan transaction. There are no particulars regarding the loan. There is nothing as to when the loan was demanded. There is nothing in the complaint that what was the mode of the payment of the loan.

The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the accused has raised probable defence that cheque was given as security as he was employed with the complainant-firm. This fact that accused was employee of the complainant and further in view of the cross-examination of the complainant that there is no document etc. on record regarding this transaction nor any account book has been produced etc. nor any security document has been got executed at the time of giving of loan, I find that the accused has raised probable defence and presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

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 01.12.2016 passed by learned JMIC, Kurukshetra, 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.

December 01, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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