IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-555-MA of 2017 (O&M)
Date of decision: August 28, 2017

Bijender Ahlawat

...Applicant

Versus

Raja Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjay Verma, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Bijender Ahlawat has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Raja Sharma, challenging the judgment dated 21.12.2016 passed by learned Judicial Magistrate Ist Class, Gurgaon, 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Bijender Ahlawat filed a complaint against accused Raja Sharma under Sections 406, 420 and 506 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Gurgaon, are as under:-

"2. It is the version of the complainant that he is an agriculturist and also involved in the business of property dealing and he is a respectable person of the society. The accused being a friend of the complainant came to the house of the complainant and asked the complainant that he requires some loan for promoting his business. On the representation of the accused the complainant believed the representation to be true and had given a loan of Rs.4,50,000/- to the accused in respect of the loan the accused had given a cheque of the same amount to the complainant. The complainant asked the accused in the month of May, 2010 that he wants money back because he wants to use the money for personal purpose. On which the accused had asked the complainant that he has sufficient balance in his account and the complainant can represent the cheque to the bank and that the complainant will not face any problem in withdrawing the amount of Rs.4,50,000/-. On the representation of the accused the complainant presented the aforesaid cheque No.563801 to his bank Oriental Bank of Commerce, Branch Sector-32, Gurgaon bearing account No.12372151006800 within the period of validity but the bank returned the cheque unpaid with a remark "account closed" which was known to the accused and he had intentionally given the cheque of the said account. Thereafter, the complainant had requested several times the accused to pay the above said amount but he put the complainant on one pretext or the other. After waiting for a long the complainant sent a legal notice on 15.06.2010 to the accused regarding the dishonour of the cheque and also asked the accused to return the above said amount or to come and do the correct signatures on cheque again, for its clearance but the accused did not reply to the legal notice which shows that the accused had a fraudulent intentions since the very beginning to grab the money of the complainant and also to misappropriate the amount given to him by the complainant. On Sunday 04.07.2010 the complainant visited/residence of the accused and requested that he urgently needs his money back but the accused with an oblique motive refused the complainant that he will not return even a single penny to the complainant and also threatened the complainant that if he will try to approach the court or to the police he will be done to death. Hence, the present complaint."

Learned JMIC, Gurgaon, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 21.12.2016.

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.

The perusal of the record, especially the impugned judgment shows that as per complainant, he has given loan of ₹4,50,000/- to the accused who had given the cheque of the same amount to the complainant. There is no date, month or year as to when this amount has been given to the accused as loan by the complainant and also, there is no date, month and year as to when the cheque was given to the complainant by the accused. It is in the complaint itself that the complainant had asked the accused in May 2010 that he wants money back, on which the accused told the complainant that he has sufficient amount in his account and complainant can present the cheque. These averments show that the cheque was given earlier to the complainant. When the cheque was presented by the complainant, it was returned back unpaid with the remarks "account closed" but the complainant did not serve legal notice within the stipulated period for dishonouring of the cheque and did not file the complainant under Section 138 of the Negotiable Instruments Act. Rather, he gave notice after a long period as stated in the complaint. Now, this complaint has been filed under Sections

406, 420 IPC etc.

From the perusal of the record, I find that there is nothing to show that intention of the accused was to cheat the complainant from the very beginning. There is nothing on the record that any document has been executed at the time of giving the loan. Otherwise also, the complainant is to prove his case beyond reasonable doubt and there is no documentary evidence to support the loan transaction. Furthermore, in the statement under Section 313 Cr.P.C., the accused took the plea that complainant was running a business in the name and style of Mahalaxmi Finance Company. The complainant collects amount from the shopkeepers according to their daily profits on the basis of interest scheme. The accused joined the aforesaid scheme. The complainant has put a condition that anybody, who wants to join the deposit scheme, has to furnish a security cheque of ₹50,000/- so that in case a person discontinues with the daily deposits scheme, the complainant can forfeit this amount of ₹50,000/-. It is further stated by the accused that at the time of joining the deposit scheme, he had furnished the cheque bearing No.563801 dated 16.11.2007 which was just signed by him and no other particulars were filled by him. The complainant has forged the aforesaid cheque and made the same of ₹4,50,000/-. Otherwise also, it looks a case of civil nature and dispute is regarding repayment of loan amount.

Keeping in view above facts, I find that no offence is made out under Sections 406, 420 IPC etc. From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused has been rightly acquitted. 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 21.12.2016 passed by learned JMIC, Gurgaon, 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.

August 28, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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