IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-902-MA of 2015 (O&M)
Date of decision: November 08, 2017

M/s Jagdish and Sons

...Applicant

Versus

Inderjeet

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Arora, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-M/s Jagdish and sons has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Inderjeet, challenging the impugned judgment dated 03.03.2015 passed by learned Chief Judicial Magistrate, Fatehabad, 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 Jagdish and sons filed a complaint against accused Inderjeet under Sections 138 of the Negotiable Instruments Act. As per complainant's version, accused was in need of money, as such, he borrowed ₹50,000 and ₹80,000/- from the complainant on 04.05.2011 and 05.05.2011 respectively, on interest, which came out as

₹43,887/- upto 22.09.2012 and accused was liable to pay a sum of ₹1,73,887/- to the complainant. In order to discharge part of his aforesaid liability, the accused issued a cheque bearing No.266685 dated 22.09.2012 for an amount of ₹1,73,887/-, in favour of the complainant, 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 CJM, Fatehabad, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 03.03.2015.

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 CJM, Fatehabad 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 the signatures on the cheque are admitted by the accused but the version of the accused is that he has borrowed amount from the complainant and the cheque was taken as security. The perusal of the evidence on record shows that accused did not sell any crop through firm of the complainant. The entries in the bahi Ex.C6 do not bear signatures of the accused and significantly, the amount of ₹80,000/- was not handed over to the accused, as per the version of the complainant himself. It is also in the evidence that there is no signature of the accused beneath the entry of ₹80,000/- shown to be advanced on 05.05.2011 in favour of the accused. This amount has been shown to have been handed over to one Raj Mohan. There is no evidence as to how Raj Mohan is concerned with the accused.

The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused from the case of the complainant or/and by leading defence evidence. In the present case, from the case of the complainant itself, the advancement of ₹80,000/- to the accused is not proved. Rather, this amount has been given to some other person namely Raj Mohan. Furthermore, there is no document on record to show any payment of interest or as to how the complainant assessed the interest of ₹43,887/- upon the total amount of ₹1,30,000/-

Learned Court below held that as per the version of the complainant, accused never visited the firm after year 2011. It is further held that in these circumstances, it becomes hard to believe that the accused turned up at the complainant-firm on 22.09.2012 and handed over the said cheque in acknowledgment of his financial liability. Learned Court also held that cheque was got filled by the accountant of the firm. At one point of time, in his cross-examination, the complainant stated that cheque was filled in by the accused himself, whereas, at the other point, he stated that the cheque was filled in by the account of the firm. Neither name of accountant was mentioned nor he was examined. The bahi entries were also made by the accountant.

In view of the above discussion, I find that presumption stands rebutted as from the case of the complainant itself, the amount of ₹80,000/- has not been given to the accused. Further, there is no document on record to show the liability to pay interest of ₹43,887/-. Moreover, this amount of ₹80,000/- was not advanced but the complainant claimed this amount in the legal notice, in other words, the complainant has asked for higher amount, even if it is presumed that there is liability of ₹50,000/-. On this ground also, the complaint is liable to be dismissed.

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 03.03.2015 passed by learned CJM, Fatehabad, 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.

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

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