IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-683-MA of 2013 (O&M)
Date of decision: August 01, 2018

M/s Anjali Investment

...Applicant

Versus

Vinay Banta

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sushil Jain, Advocate
for the applicant.

Mr.Parveen Kaushik, Advocate
for the respondent.

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INDERJIT SINGH, J.

Applicant-M/s Anjali Investment has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Vinay Banta, challenging the impugned judgment dated 12.10.2009 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 further stated that if the leave to file appeal is not granted, then the applicant will suffer an irreparable loss. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant M/s Anjali Investment through sole proprietor Sheela Rekhan through her Special Attorney Shashi Pal Sharma filed a complaint against accused Vinay Banta under Section 138 of the Negotiable Instruments Act read with Section 420 IPC. As per complainant's version, accused, in order to discharge his existing part liability, issued a post dated cheque bearing No.0152530 dated 05.03.2003 for a sum of ₹96,150/-, in favour of complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Account Closed'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C and he was confronted with the evidence. He denied all the incriminating evidence and pleaded his innocence and false implication. He further stated that no liability is outstanding towards Anjali Investment and the cheque has been presented wrongly. He further pleaded that he has not taken any loan from Anjali Investment and that the account was closed way back in 1999. He also alleged that he has not received any copy of notice and the cheque book containing the cheque in question was issued to him in the year 1996 and his account was closed in the year 1999. Accused also pleaded that after the year 1999, he did not enter into any transaction with M/s Anjali Investment and he has not issued any cheque in the year 2003. In defence, accused examined DW-1 Vijay Kumar, Clerk, Indian Overseas Bank.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 12.10.2009.

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

Notice of the application was issued. Learned counsel for the respondent appeared and contested the application.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties 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. At the time of arguments, 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 shows that in the complaint, no date, month and year has been mentioned as to when the loan was advanced. No particulars of any type have been mentioned in the complaint as to whether the amount was paid in cash or by cheque. There is no averment that at which place and in whose presence the loan was advanced. All these facts support the defence version of the accused.

Further, I find that even in the complaint, the complainant has not given the extent of liability. The perusal of the record shows that Attorney CW-3 Shashi Pal Sharma in his cross-examination, has stated that accused is dealing with their firm since 2004 and prior to that, he had no dealing with their firm, which means that cheque was not given for any dealing with the firm as the cheque was given in the year 2003 and accused has dealing since 2004, which supports the defence version of the accused. Furthermore, the cheque book was issued in 1996 and account was closed in 1999. Then question of issuing cheque in 2003 does not arise.

Further, learned Court below has observed that body of the cheque as well as date are filled by the same pen and signatures are with different ink. The assertion of the complainant that date was filled by the accused himself does not seem to be correct as the complainant has himself admitted that the cheque was filled by him.

The defence raised by the accused is probable one. Keeping in view the above facts, I find that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

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-respondent 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 12.10.2009 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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 01, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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