IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-736-MA-2013 (O & M)
Date of Decision:17.09.2018

Satish Chand

... Applicant

Versus

Manohar Lal Bhardwaj and another

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Rajesh K. Dadwal, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant-Satish Chand has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondents-Manohar Lal Bhardwaj and Mandhu Bala, challenging the impugned judgment dated 03.05.2013 passed by learned Sub Divisional Judicial Magistrate, Mukerian, vide which the respondents were 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 the trial Court has failed to appreciate the evidence of complainant. The trial Court has committed an error in acquitting the respondents. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that applicant-complainant, Satish Chand filed a complaint against respondents-accused namely Manohar Lal

Bhardwaj and Madhu Bala, under Sections 420, 406 and 34 IPC. The brief facts of the complaint, as noted down by learned trial Court in the impugned judgment, are as under:-

> *"In brief, the facts of the present case are that the accused who were familiar with the complainant and visited the house of the complainant in the Ist week of August, 2006 at village Budhabarh. The accused who are both wife and husband told the complainant that they sent the persons abroad for good employment and that they had already sent a number of person to New Zealand and all were well settled and there was no any complaint from anyone and they assure that if the complainant agreed to sent any of his relative then there would be no cheating. At the instance of accused no1. and 2, the complainant agreed to send his brother in law (sala) namely Sukhdev Singh to New Zealand for employment. The accused demanded Rs.6,00,000/- for this purpose out of which Rs.1,50,000/- was demanded in advance and the remaining Rs.4,50,000/- was to be obtained by them on receiving Visa which was to be received within 15 days from the date of payment of Rs.1,50,000/-. At that time Sukhdev Singh, Rajwant Kaur and Gian Kaur were also present in whose presence the above terms were settled and both the accused agreed to sent Sukhdev Singh brother in law of the complainant to New Zealand. That on 12 August 2006 both the accused came in the house of the complainant where as stipulated Rs.1,50,000/- was handed over to the accused no.1 at the instance of accused no.2 as part payment for sending Sukhdev Singh New Zealand. Here again both the accused promised in presence of Rajwant Kaur, Sukhdev Singh and Gian Kaur that they would receive*

the Visa of New Zealand for Sukhdev Singh within 15 days and then send him to New Zealand. That the complainant relying upon the version of the accused made payment Rs.1,50,000/- to them but the accused did not send Sukhdev Singh to Newzealand nor did they returned the amount of Rs.1,50,000/-. They also did not receive any Visa from Newzealand. However, to pacify the complainant the accused sent a photo copy of letter dated 2.9.2006 allegedly issued by the concerned agency of Newzealand. The complainant pressed the accused to return the amount of Rs.1,50,000/- and for this the accused no.1 issued a cheque dated 01.10.2006 for the amount of Rs.1,50,000/- in favour of the complainant Satish Chand for discharge of the said amount. The complainant deposited the said cheque for encashment but the same was dishonoured on the ground of 'insufficient funds' vide memo of intimation dated 28.3.2007. The complainant was not aware of the malafide intention of both these accused at the time of making payment to them. Similarly, the accused no.1 was aware that no amount was existing in his account at the time of issuance of cheque dated 01.10.2006 in favour of the complainant but in spite of this, he issued the said cheque to get rid of the complainant and hence again cheated the complainant by issuing the fake cheque. That the inducement was made by the accused at village Budhawarh, the payment was also made to them at village Budhawarh and the intimation for dishonour of cheque was also received by the complainant at village Budhawar P.S.Mukerian. Hence, this complaint.'

On the basis of preliminary evidence, the respondents/accused were summoned to face trial under Sections 420/34 IPC.

In pre-charge evidence, complainant examined Gian Kaur as CW 1 and Rajwant Kaur as CW 2. Thereafter, the respondents were charge-sheeted under Sections 420/34 IPC, to which they pleaded not guilty and claimed trial.

At the close of complainant's evidence, the accused were examined under Section 313 Cr.P.C. and confronted with the evidence of the complainant. They denied the correctness of evidence and pleaded their innocence. In defence evidence, they examined Nirmal Chand as DW 1 and Surinder Singh as DW 2 and thereafter, closed their evidence.

Learned trial Court, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 03.05.2013.

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.

I find that complainant-Satish Chand in his cross-examination stated that he had met accused-Manohar Lal for the first time at his house. It is also admitted by him that cheque amounting to ₹1,50,000/- was issued by accused-Manohar Lal in lieu of payment of ₹1,50,000/- received by him. He also admitted that on dishonour of cheque, he had filed the present complaint and except that no other complaint or proceeding was filed by him. He further stated that he had never issued any legal notice to the accused informing him about dishonour of cheque. Perusal of record shows that firstly, there is nothing on record to show that from the very beginning, intention of the accused was to cheat the complainant. Secondly, there is no material allegation against respondent No.2-Madhu Bala and it looks that she has been impleaded only as she is wife of the main accused, Manohar Lal Bhardwaj. Furthermore, perusal of record shows that the complainant was promised to get the visa within 15 days and ₹1,50,000/- was stated to be paid on 12.08.2006. It is also the case of complainant that the accused had also sent a photocopy of letter dated 02.09.2006 allegedly issued by the concerned agency of New Zealand. It is the further case of complainant himself that cheque of ₹1,50,000/- issued on 01.10.2006 which was dishonoured on 28.03.2007 on the ground of "insufficient funds". But, the complainant kept silent for such a period and even the legal notice was not given under Section 138 of the Negotiable Instruments Act asking the accused for making the payment. No complaint under Section 138 of the Negotiable Instruments Act was filed. However, after passing of one year and three months of dishonour of cheque, the present complaint was filed on 11.06.2008. Furthermore, perusal of record shows that the amount of ₹1,50,000/- was paid for sending abroad to Sukhdev Singh. Sukhdev Singh has also made a complaint to the police that the accused had taken ₹5 lakh for sending him abroad and application given by Sukhdev Singh against accused to SSP Jalandhar as Ex.D-1, copy of affidavit of Sukhdev Singh as Ex.D-2, copy of statement of Sukhdev Singh recorded before police as Ex.D-3, final enquiry report Ex.D-4 have been duly proved. As per the case of accused, an amount of ₹1,50,000/- was paid back to Sukhdev Singh.

Keeping in view the above evidence produced on record, I find that a reasonable doubt exists in the case of complainant. The trial Court after appreciating the evidence in right perspective has acquitted the accused. The findings given by learned trial Court are correct, as per evidence and law. In no way, the findings of trial Court 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.

In view of the above discussed evidence, I find that the impugned judgment dated 03.05.2013 passed by learned Sub Divisional Judicial Magistrate, Mukerian is correct, as per evidence and law 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 under Section 378(4) Cr.P.C. stands dismissed.

17.09.2018 **(INDERJIT SINGH)**
parveen kumar **JUDGE**

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