IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1044-MA of 2017 (O&M)
Date of decision: October 10, 2018

Virender Singh

...Applicant

Versus

Parveen Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Akshay Jindal, Advocate
for the applicant.

Mr.G.S.Sandhu, Advocate
for the respondent.

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<u>INDERJIT SINGH, J.</u>

Applicant-Virender Singh has filed this application under Section 378(4) Cr.P.C. read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent Parveen Kumar, challenging the judgment dated 08.03.2017 passed by learned Judicial Magistrate Ist Class, Karnal, whereby 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, complainant Virender Singh filed a complaint against accused Parveen Kumar under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Karnal, are as under:-

> *"2. Sans unessentials, the present complaint has been filed by the complainant with the averments that the accused was serving in IDBI Bank, Sector-12, Karnal. The Father and uncle Rajbir & Ranbir Singh of complainant were having their bank accounts in the said bank and they wanted to take loan from the bank. In this process, the accused came into their contact and he told them that he and his cousin Ravinder deals in the business of sending people to foreign countries. The accused introduced Ravinder to them and they both had demanded a sum of ₹20 Lakhs for sending the complainant to USA and promised to get visa for him within a period of six months. It has been further stated the complainant, his uncle and father came under the influence of the accused and his cousin and in the month of June 2012, they deposited an amount of ₹12 Lakhs after taking the same as a loan from the bank, in the bank account bearing no.3511004000036379 standing in the name of Ravinder and the remaining amount of ₹8 Lakhs was paid to them in cash on 28.6.2012 outside the bank premises in presence of Vikas Mehla. Besides this, the accused has taken passport and other documents from the complainant. It has been further stated that the accused failed to get visa for the complainant within stipulated period and in the month of November 2012, accused left the job of the said bank and started working in Reliance Insurance company.*
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> *There-after, the complainant asked the accused to repay the amount taken by him but the accused postponed the matter on one pretext or the other and ultimately in discharge of his this legal liability, the accused issued a cheque bearing no. 19742 dated 16.03.2013 for an amount of ₹20 Lakhs out of his bank account in favour of complainant and assured that the cheque would definitely be honoured when presented for encashment. Accordingly, the complainant presented the cheque in question with his bankers for encashment. However, the same was returned by the bank. There-after, again the complainant asked the accused to make payment but he postponed the matter on one pretext or the other and again in discharge of his this legal liability, the accused issued a cheque bearing no. 03876 dated 10.06.2014 for an amount of ₹20 Lakhs drawn at IDBI Bank, Karnal out of his bank account bearing no.351100400001632 in favour of the complainant and assured that the cheque would definitely be honoured when presented for encashment. Accordingly, the complainant presented the cheque in question with his bankers for encashment. However, the same was returned by the bank. with remarks "Funds insufficient", vide memos dated 20.06.2014 & 3.9.2014 respectively. After that, the complainant served a legal notice upon the accused on 19.09.2014. The complainant asked him to make payment of cheque amount within 15 days from the receipt of the same,*

> *however, till date the accused did not give any reply to the said notice nor did he pay the cheque amount to the complainant and as accused knowingly and willfully did not honour the said cheque with malafide intention and in this way, he has committed an offence under section 138 of Act. Hence, the present complaint."*

The complainant examined himself as CW-1 and closed the evidence. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him and pleaded his false implication. In defence, accused examined DW-1 Norita, Assistant Manager, IDBI Bank and also tendered copies of documents Ex.X1 to X4.

Learned JMIC, Karnal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 08.03.2017.

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.

From the record, I find that as per the complainant version, ₹12 lakhs has been deposited in the bank account of Ravinder. Ravinder has not been made accused in the present case. ₹8 lakhs are further stated to have been paid in cash to present accused Parveen Kumar and Ravinder. There is no document on record to show this loan transaction of ₹8 lakhs. Furthermore, as per complainant, this amount has been paid in the presence of Vikas Mehla but Vikas Mehla has also not been examined to corroborate the oral version of the complainant regarding payment of ₹8 lakhs. Even if it is taken as it is, even then, the accused has no liability at the time of issuance of cheque of ₹20 lakhs as ₹12 lakhs has been paid to Ravinder, who is not accused in this case. There is also nothing in the complaint that accused Parveen Kumar has issued the cheque to pay the liability of Ravinder nor there is any averment in the complaint that Parveen Kumar stood surety regarding that amount nor there is any document of any type to show that Parveen Kumar ever agreed to pay the liability/amount paid to Ravinder.

In view of the above discussion, I find that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted from the case of the complainant itself. The cheque in question was not issued for any existing legal liability by the accused and accused was not liable to pay ₹20 lakhs to the complainant.

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 08.03.2017 passed by learned JMIC, Karnal, 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.

October 10, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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