IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1807-MA of 2015 (O&M)
Date of decision: August 29, 2018

Arjan Singh

...Applicant

Versus

Surjeet Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arun Abrol, Advocate
for the applicant.

****

INDERJIT SINGH, J.

Applicant-Arjan Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Surjeet Kaur, challenging the impugned judgment dated 11.08.2015 passed by learned Judicial Magistrate Ist Class, Gurdaspur, 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, complainant Arjan Singh filed a complaint against accused Surjeet Kaur under Section 138 of the Negotiable Instruments Act. As per complainant's version, Surjeet Kaur took a friendly loan of ₹6 lakhs from him in June 2012 and agreed to return the same before 12.12.2012. Accused issued cheque No.429234 dated 25.01.2013 amounting to ₹6,00,000/- to discharge her legal liability, which on presentation for encashment, was returned back dishonoured with the remarks 'drawer signature differ'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1 and tendered into evidence documents i.e. cheque, return memo, legal notice and postal receipt.

At the close of the complainant evidence, accused was examined under Section 313 Cr.P.C. She was confronted with the evidence of the complainant. She denied all the incriminating evidence against her.

Learned JMIC, Gurdaspur, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 11.08.2015.

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 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 perusal of the record, I find that the complainant has not mentioned any date as to when the loan was advanced to the accused and there is no explanation, as to why specific date was not given. No receipt or security document was got executed while lending such a huge amount of ₹6 lakhs to the accused. Further, there is no document on record to show this loan transaction. No income tax return or bank record has been produced to show the withdrawal of the amount etc. from the bank. Even, there is no evidence regarding capacity of the accused to lend such a huge amount.

As per cross-examination of the complainant, he admitted that he also lent amount of ₹3,25,000/- to one Prabhat Singh and ₹2,60,000/- to Tarlok Singh. If that is the case, then it is clear that complainant might be maintaining the record and he has not produced any such record and concealed the best evidence to prove the loan transaction. Learned trial Court further held that no prudent person would pay such a huge amount to lady, who is more than 60 years of age and that too without verifying her assets as to get the debt secured.

The case of the accused is that she only borrowed ₹60,000/- but the complainant misused the blank cheque received from her. I have seen the original cheque in the lower Court record. On the face of it, in my view, the words are in different ink and figures are in different handwriting. Even the date of the cheque, signatures and name are also in separate ink. This fact further supports the version of the accused that blank cheque was given as security. If the cheque would have been issued for discharging the liability of ₹6 lakhs, then the amount in figures or words might have also been filled at that very time with same ink. This fact, rather shows that version of the accused is probable one, especially, in the absence of document of any type to show lending of ₹6 lakhs. Further, the complainant is not giving any particular regarding the loan transaction. Date has not been given. Nothing has been mentioned that at which place and in whose presence the money was given; whether the money was paid in cash; whether the money was withdrawn from the bank or lying in the house; whether the amount has been shown in the income tax return; whether any entry was made in any register showing this transaction. All these facts rebuts the presumption under Section 139 of the Negotiable Instruments Act. The defence raised by the accused is probable, which is duly supported and corroborated from the case of the complainant as well as the defence evidence.

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 11.08.2015 passed by learned JMIC, Gurdaspur, 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 29, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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