IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1744-MA of 2014 (O&M)
Date of decision: August 02, 2018

Subhash Arora

...Applicant

Versus

Sunil Singh @ Bittoo

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajesh Lamba, Advocate
for the applicant.

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

Applicant-Subhash Arora has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sunil Singh @ Bittoo, challenging the impugned judgment dated 10.09.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 Subhash Arora filed a complaint against accused Sunil Singh @ Bittoo under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Faridabad, are as under:-

> *"1. Sh. Sunil Arora, the complainant, has filed the instant complaint under Section 138 of Negotiable Instruments Act (hereinafter referred to as N.I. Act) alleging that accused is well known to the complainant. The accused borrowed a friendly loan of Rs.1,50,000/- from the complainant from time to time for his personal use, in the following manner :-*
>
> *On 3.5.2009 - Rs.30,000/- given cash.*
> *On 20.5.2009 - Rs.35,000/- given cash.*
> *On 25.6.2009 - Rs.30,000/- given through cheque.*
> *On 20.7.2009 - Rs.25,000/- given cash.*
> *On 12.8.2009 - Rs.12,000/- given cash.*
> *On 25.9.2009 - Rs.18,000/- given through cheque.*
>
> *After taking the above said loan, accused promised to repay the same upto April, 2010 to the complainant, but the accused failed to make the repayment of the said loan amount within time. The complainant asked several times to the accused to make the repayment of the above said loan amount to the complainant and then after admitting his liability, accused made the repayment of said amount, for which the accused issued following postdated cheques in favour of the complainant in the first week of May, 2011 :-*
>
> *cheque No.084605 dt. 9.5.2011 for Rs.90,000/-*
> *cheque No.084606 dt. 22.10.2011 for Rs.60,000/-*
>
> *Both cheques drawn on The Nainital Bank Limited, SCO F-56, HUDA Market, Shopping Centre, Sector-29, Faridabad branch (hereinafter referred to as the cheques in question) in favour of complainant. Upon presentation, the above said cheques were returned back dishonoured for the reason 'Funds Insufficient' vide bank return memos dt. 25.10.2011, the intimation of which was received by the complainant through his bankers on 26.10.2011. Consequently, the complainant issued a legal notice dt. 22.11.2011 to the accused, but accused failed to make the payment of the cheque amount within the stipulated period of 15 days of the receipt of legal notice. Hence, this complaint to set the criminal law in motion has been made."*

The complainant examined himself as CW-1 and closed the evidence after tending into evidence Ex.C1 and Ex.C2 Cheques in question, Ex.C3 and Ex.C4 bank return memo, Ex.C5 legal notice, Ex.C6 Postal receipt and Ex.C7 Registered A.D.

At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant. He denied the incriminating evidence against him and pleaded false implication. He further pleaded that he did not take alleged loan of ₹1,50,000/- from the complainant, rather he had taken ₹30,000/- on 25.06.2009 and ₹18,000/- on 25.09.2009 through cheques from the complainant. Then, he had repaid the amount of ₹30,000/- by way of installments for a sum of ₹4200/- each in ten installments to the complainant. Then, he had also repaid the sum of ₹18,000/- by way of installments for a sum of ₹2600/- each in ten installments. In this way, he had returned ₹68,000/- to the complainant including interest. In spite of this, the complainant had not returned his security cheques, which had taken by the complainant at the time of giving this money, which were blank cheques and signatures of accused were obtained on the said blank cheques. It is also the case of the accused that complainant is a habitual money lender and he had filed false cases against various persons. He further stated that he had received the legal notice. He further stated that he does not know the contents thereof and he cannot read English. He had received the legal notice after delay of long time. In defence, accused examined himself as DW-1, DW-2 Ashok and DW-3 Sunder Singh. Accused tendered into evidence Ex.D1 to Ex.D7 i.e. statement of account of Sunil Singh and copies of complaints filed by the complainant against Ranjit Singh @ Guddu etc. and Mark-A to Mark-D i.e. four other complaints filed by the complainant and complaint made to the Police Commissioner by Sunder Singh.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated

10.09.2014.

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

Lower Court record was requisitioned.

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the findings given by learned Court below 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 handing over of cheques to the complainant by the accused is not disputed. As per case of the accused, these cheques were given blank as security and he has taken loans of ₹30,000/- and ₹18,000/- on 25.06.2009 and 25.09.2009 respectively, which have been duly returned in installments along with interest and in total ₹68,000/- has been paid. The perusal of the defence evidence shows that present complainant has filed complaints against various persons and the amount is stated to have been given like in the present case. Rather, two DWs along with accused have also appeared to support the defence version. The complainant had lent money to various persons, as is clear from more than 10 complaints placed on record by the accused and those persons also might have returned some money and it is impossible to remember all the accounts of so many persons orally that as to how much money was given, on which date and how much money has been returned by those persons. It is clear that complainant is maintaining some accounts, may be a diary, but he has not produced any document on record to show this loan transaction of ₹1.5 lakhs.

Furthermore, two amounts were given through cheques, which have been duly admitted. The remaining amounts which are shown in cash, there is nothing on the record to show these loan transactions. The production of account becomes more important in this case when the accused is admitting two cheques of ₹30,000/- and ₹18,000/- only and also saying that he has returned this money through installments along with interest.

The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In this case, the accused has raised probable defence, which is duly supported and corroborated from the defence evidence as well as case of the complainant. It also looks unnatural that complainant is lending money/amounts to various persons and without interest as in the complaint, the complainant has nowhere stated that he was charging any interest from the accused. If he is not charging any interest, then why he has given such a huge amount, as alleged by him, to the accused. It is not the case of the complainant that accused is his family friend etc. Otherwise also, there is nothing to disbelieve the statements of DWs, who have also taken the loan and have supported the case of the accused and even, in their cases, security cheques have been taken and after returning the loan, the cheques were misused as deposed by them. The perusal of the record shows that presumption 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 10.09.2014 passed by learned JMIC, Faridabad, 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 02, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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