

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.A-327-MA of 2014 (O&M)

Date of decision: October 16, 2018

Satish Gupta

...Applicant

Versus

Ashok Kumar Narang

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vishva Nath Sharma, Advocate for
Mr.D.S.Gurna, Advocate
for the applicant.

None for the respondent.

INDERJIT SINGH, J.

Applicant-Satish Gupta has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ashok Kumar Narang, challenging the impugned judgment dated 08.01.2014 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, therefore, prayed that leave to appeal be granted.

As per the record, complainant Satish Gupta filed a complaint against accused Ashok Kumar Narang under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the

judgment passed by learned JMIC, Yamuna Nagar at Jagadhri, are as under:-

“The present complaint has been filed by the complainant, under Section 138 of the Negotiable Instruments Act, 1881 (for brevity hereinafter referred to as the Act) against the accused mentioned above on the ground that accused being in cordial relationship with the complainant agreed to sell his part of his house bearing no.38-P, measuring 14-9' x 42' situated at Khera Mohalla, Yamuna Nagar vide an agreement to sell dated 8-8-2008 for a total sale consideration of Rs.4 lakhs, out of which the accused allegedly received a sum of Rs.1,50,000/- from the complainant as earnest money against a receipt duly executed at the foot of the agreement to sell dated 8-8-2008 in the presence of attesting witnesses. It is the case of the complainant that said agreement to sell could not be culminated into sale deed, because accused expressed his inability to do the same and sought some more time from the complainant, which according to the complainant was granted by him to the accused keeping into account the cordial relationship with the accused. Thereafter, the story of the complainant is to the effect that a dispute arose between the parties, as accused did not get the sale deed executed in favour of the complainant and eventually in the year 2009 due to intervention of the respectables of the society, matter was patched up between the parties and accused decided to return the earnest money which was taken by him from the complainant and for that in discharge of his existing liability towards the complainant, the accused had issued cheque in question bearing No.012703 dated 5-11-2009 in the sum of Rs.1,50,000/- drawn on Centurion Bank of Punjab now HDFC Bank Ltd. Branch Yamuna Nagar. It is allegation of the complainant that said cheque was presented by him to his banker Oriental Bank of Commerce, Branch MLN College, Yamuna Nagar but the said cheque was dishonoured by the bank vide bank memo dated 12-11-2009 with the remarks 'A/c closed'. Thereafter, legal notice dated 18-11-2009 was issued by the complainant to the accused calling upon the accused to make the requisite payment within 15 days, but the accused failed to make the said payment and accordingly, complainant filed the present complaint on 9-12-2009 being within the period of limitation.”

The complainant examined himself as CW-1 and tendered into evidence documents agreement to sell, receipt, cheque, return memos, legal notice, postal receipt etc. Complainant also examined CW-2 Manish

Kumar, officer from HDFC Bank. 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. He further pleaded that he never entered into any agreement to sell with the complainant and rather stated that he had become a member of a chit fund which was being run by the complainant and at that time, he has given the cheque in question along with certain blank documents to the complainant and despite the fact that his chit fund has been successfully completed as all the installments were paid by him, the complainant has misused the cheque in question against him by filing the present complaint against him. He admitted the receipt of legal notice, but further stated to the effect that he had asked the complainant to return his blank documents to him many a times. In defence, accused examined DW-1 Jaswant Singh, Criminal Ahlmad, who proved FIR and relevant papers in case titled as 'State vs. Satish', which has been filed against the present complainant under Section 76 of the Chit fund Act. He further produced recovery memo, which has been prepared by the Investigating Officer of that case Ex.D2. He deposed that in the said criminal case, there exists 15 blank cheques which have been recovered by the police from the present complainant and in addition to 15 blank cheques, one diary, slips, 7 blank stamp papers, 11 pronotes, which were signed by various persons, were also recovered from the complainant. Accused also examined DW-2 Vandana and DW-3 Ramesh Kumar.

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

dated 08.01.2014.

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. Earlier, learned counsel for the respondent was appearing but today, none has put in appearance on behalf of the respondent.

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.

Further, I find that signature on the cheque is admitted, therefore, presumption under Section 139 of the Negotiable Instruments Aact arises in favour of the complainant and against the accused. It is settled law that presumption can be rebutted by raising probable defence. The defence of the accused is that he has not entered into any agreement to sell with the complainant. Rather, there is transaction between him and the complainant regarding chit fund and he (accused) has already paid whole amount and the cheques taken in lieu thereof, have been misused.

First of all, case of the complainant, in the present case, is

based on the agreement to sell. I have gone through the evidence on record.

No scribe of agreement to sell has been examined nor any attesting witness has been examined to support and corroborate the version of the complainant. Furthermore, the complainant has produced copy of agreement to sell and not the original agreement. The photocopy of the agreement cannot be proved before the Court, as per law. Permission for leading secondary evidence has not been taken. Therefore, this photocopy of the agreement to sell is inadmissible in evidence.

Furthermore, the defence of the accused is supported and corroborated by DW-1 Jaswant Singh, who proved the FIR against the complainant regarding chit fund and also proved recovery of 15 blank signed cheques, pronotes, stamp papers etc., in that case. Therefore, the defence raised by the accused is probable one and 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 08.01.2014 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.

October 16, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No