IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-478-MA of 2015 (O&M)
Date of decision: October 26, 2018

The Kaithal Primary Co-op Agriculture and Rural Development Bank Ltd.
...Applicant

Versus

State of Haryana and others
...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vinod Bhardwaj, Advocate
for the applicant.

Mr.Sukhdeep Parmar, DAG, Haryana
for the respondent-State.

Mr.Karamjit Singh, Advocate for
Mr.A.S.Kalra, Advocate
for respondents No.2 and 3.

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INDERJIT SINGH, J.

Applicant-The Kaithal Primary Co-op Agriculture and Rural Development Bank Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against State of Haryana and other respondents, challenging the impugned judgment dated 20.01.2015 passed by learned Judicial Magistrate Ist Class, Kaithal, 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 The Kaithal Primary Co-op

Agriculture and Rural Development Bank Ltd. filed a complaint against accused Rajpal @ Ram Phal and Rajinder Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused No.1 availed loan facility for purchase of a tractor for ₹5,20,000/-. In discharge of part of existing liability, accused No.2, who is son of accused No.1, issued cheque No.180462 dated 28.10.2010 amounting to ₹1,96,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'funds insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Considering preliminary evidence, only accused No.2 Rajinder Singh was summoned to face trial by the trial Court.

The complainant examined CW-1 Tejbir Singh, Branch Manager. 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. Accused got himself examined as DW-1

Learned JMIC, Kaithal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 20.01.2015.

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 State counsel as well as learned counsel for respondents No.2 and 3 appeared and contested the application.

I have heard learned counsel for the parties as well as learned State counsel 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.

Further, I find that it is admitted fact that loan was taken by accused Rajpal @ Ram Phal and the cheque was issued by accused Rajinder Singh. There is no allegation in the complaint that accused Rajinder Singh, who is son of accused Rajpal @ Ram Phal, stood surety for debt of his father. There is also no allegation that he executed any document like guarantee deed etc. Further, there is no allegation that of the complainant that the cheque in question was obtained by it as a guarantee from Rajinder Singh at the time of loan. As the cheque was issued by Rajinder Singh and he was not surety for the debt of his father nor there is any cogent evidence that Rajinder Singh issued cheque to repay the debt of his father, therefore, there was no existing liability of any type against Rajinder Singh.

Further, the perusal of the cheque shows that amount in words, figures and date of the cheque, are in same ink but the signatures of Rajinder Singh on the cheque, is with different ink, which means that this cheque has been given as blank, which was filled up by the complainant later on. This is not the case of the complainant that it had taken the cheque at the time of granting the loan from son of the loanee or son of loanee stood surety or given the cheque as security for repayment of the loan.

Rather, in the first column of the cheque, the cheque was shown to be payable to 'The Kaithal Primary Co-op Agri. & Rural Dev Bank Ltd. Kaithal, Br. Kalayat' by appending rubber stamp of the bank on it and it is not written with the pen, which clearly shows that blank cheque of son of the loanee was filled up by the bank and this cheque was not issued by Rajinder Singh for repayment of the loan to the complainant.

The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused. Accused Rajpal @ Ram Phal had not issued any cheque and thus, no committed any offence under Section 138 of the Negotiable Instruments Act. Accused Rajinder Singh has also not given the cheque to repay the loan of his father, rather, blank has been filled by the complainant and there is no existing liability against accused Rajinder Singh also.

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 20.01.2015 passed by learned JMIC, Kaithal, 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 26, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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