

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

CRM No.A-590-MA of 2014 (O&M)

Date of decision: December 13, 2018

Vinod Kumar

...Applicant

Versus

Satish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Narender Kaajla, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Vinod Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Satish Kumar, challenging the impugned judgment dated 15.02.2014 passed by learned Judicial Magistrate Ist Class, Hisar, 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 Vinod Kumar filed a complaint against accused Satish Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had entered into an agreement with him on 24.01.2007, for the sale of a plot no.30, measuring

the owner in possession of the same. The accused had obtained ₹3 lacs from the complainant and promised to return ₹6 lacs in case of any default in getting the sale deed registered in favour of the complainant. The complainant had paid the amount of ₹3 lacs to the accused but it was later on revealed that the accused was not the owner of the said plot. The complainant when came to know about the dishonest intention, the accused had felt sorry and promised to pay ₹6 lacs to the complainant. While discharging his monetary liability, the accused had issued a cheque bearing No.027274 dated 01.05.2007 for an amount of ₹6 lakhs, in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Exceeds arrangement'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as PW-1 and also examined PW-2 Rahul. Original agreement was also produced and affidavits were also placed on record.

At the close of complainant evidence, 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 B.K.Khanna, DW-2 Balwant Singh Verma, DW-3 Mahavir Singh, DW-4 Gajanand and DW-5 Ashok Kumar.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 15.02.2014.

Aggrieved from the above-said judgment, present appeal along

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 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.

The perusal of the record shows that agreement to sell Ex.P6/A and Ex.P7/A speaks of an amount of ₹2 lakhs as earnest money and even if it is considered that agreements Ex.P6/A and Ex.P7/A were entered into between the parties, then also, the double of the earnest money comes out to be ₹4 lakhs whereas case of the complainant is regarding payment of ₹3 lakhs and in case of non-execution of sale deed, the accused is to return double amount i.e. ₹6 lakhs by way of cheque. As per agreement, only ₹2 lakhs was paid as earnest money and on breach of agreement, only ₹4 lakhs was to be paid. So, there was no liability to pay ₹6 lakhs to the complainant.

Furthermore, the complainant has improved his case by stating that he had given additional ₹1 lakh but there is no such evidence on record nor there is any pleading in the complaint. There is also no document on record to show this fact. It is settled law that presumption under Section 139

defence. The presumption has been rebutted from the case of the complainant itself. Moreover, learned trial Court held that there is no evidence on record to show that ₹3 lakhs were given to the accused. The Court further held that both the witnesses i.e. complainant and PW-2 Rahul have given different story and Court has not relied upon the statement of PW-2 Rahul.

Learned counsel for the applicant argued that rate as per the agreement was ₹1900/- per square and total amount comes to ₹3,80,000/-. It may be the case that total amount comes to ₹3,80,000/- but even then, as per agreement, earnest money of ₹2 lakhs has been paid. Learned Magistrate has discussed the evidence in minute details and also discussed the documents on record.

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 findings can be held as perverse or against the evidence and law.

In view of the above discussion, I find that the impugned judgment dated 15.02.2014 passed by learned JMIC, Hisar, 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.

December 13, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No