IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-70-MA of 2014 (O&M)
Date of decision: October 29, 2018

Parmod Kumar

...Applicant

Versus

Rakesh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Anurag Jain, Advocate
for the applicant.

Mr.Shahbaaz Inder Singh, Advocate for
Mr.Kunal Dawar, Advocate
for the respondents.

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INDERJIT SINGH, J.

Applicant-Parmod Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Rakesh Kumar and Jigyasa Finance, challenging the impugned judgment dated 19.10.2013 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 further stated that in case leave is not granted, then the applicant will suffer irreparable loss. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Parmod Kumar filed a complaint against accused Rakesh Kumar and Jigyasa Finance under

Section 138/141 of the Negotiable Instruments Act. As per complainant's version, accused No.1 was having cordial relations with him. In the month of September 2008, accused No.1 requested the complainant to give an amount of ₹7,50,000/- to him and on his request, complainant arranged money from his known namely Satnam and in the month of October 2008, had handed over the money to accused with interest at the rate of 24% per annum. In February 2009, accused had met with an accident and he made the payment of ₹70,000/- to the brother of the complainant in the hospital. In order to discharge legally recoverable debt, accused had issued a cheque bearing No.004935 dated 08.02.2010 for a sum of ₹6,80,000/-, in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'account closed'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined PW-1 Satnam and appeared himself as PW-2 and tender documents; original cheque, bank memo, legal notice, postal receipt, registered A.d., copy of jamabandies Ex.P7 and P8. 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 and pleaded his false implication. In defence, accused examined DW-1 Rakesh Kumar, DW-2 Bhanwar Bhatia and DW-3 Shamsher Singh, Handwriting Expert.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 19.10.2013.

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 counsel for the respondents appeared and contested the application.

Lower Court record was also requisitioned.

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

Firstly, no date and month has been mentioned as to when the amount has been paid by the complainant to the accused. Secondly, there is no document on record to show that ₹70,000/- has been returned by the accused to the brother of the complainant and for that also, no date has been mentioned, only February 2009 has been mentioned i.e. month regarding accident. Further, I find that there is no document to show the loan transaction. The complainant stated that he has taken whole amount of ₹7,50,000/- from Satnam and given it to the accused on 24% interest per annum. No document is there of any type to show this loan transaction. Further, no security document has been taken nor any receipt has been taken from the accused at the time of advancing such a huge amount.

Further, I find that if the complainant is not to contribute even a single rupee for giving the loan, then why he will take whole amount from Satnam to hand over to the accused and that too without any document. DW-3 Shamsher Singh, Handwriting Expert had stated that signatures on the cheque were not of the accused. It is also not clear that why Jigyasa Finance was made an accused in the present case, when there is no allegation that Jigyasa Finance has taken any loan from the complainant. Furthermore, the cheque has been signed two times which also looks unnatural. The accused has raised probable defence and presumption has been duly rebutted, especially, when the cheque was not bearing signatures of the accused. Therefore, no case is made out under Section 138 of the

Negotiable Instruments Act against the accused. The complainant has not made any attempt to produce Handwriting and Fingerprint Expert to rebut the statement of DW-3 Shamsher Singh that cheque was not bearing signatures of accused.

The perusal of the findings given by learned trial Court 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 findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted. In no way, the impugned judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 19.10.2013 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.

October 29, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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