IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-696-MA of 2015 (O&M)
Date of decision: November 12, 2018

Kapil Dev

...Applicant

Versus

M/s R.K.Alloys and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.R.Dhawan, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Kapil Dev has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s R.K.Alloys and Kamlesh Goyal, challenging the impugned judgment dated 19.02.2015 passed by learned Judicial Magistrate Ist Class, Zira, vide which the accused-respondents were 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 Kapil Dev filed a complaint against accused M/s R.K.Alloys and Kamlesh Goyal under Section 138 read with Section 142 of the Negotiable Instruments Act. As per complainant's version, accused Kamlesh Goyal is proprietor and Arun Goyal is authorized signatory of the accused firm M/s R.K.Alloys and they, on behalf of the firm, have borrowed a sum of ₹5 lakhs from him for their business purposes and in lieu of their existing liability, accused issued cheque bearing No.576333 dated 03.01.2013 for a sum of ₹5,00,000/-, in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'insufficient funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1 and tendered into evidence documents; original cheque Ex.C1, memo Ex.C2, copy of legal notice Ex.C3, postal receipts Ex.C4 and Ex.C5. At the close of complainant evidence, the accused Kamlesh Goyal was examined under Section 313 Cr.P.C. She was confronted with the evidence of the complainant and she denied all the incriminating evidence against her and pleaded her false implication and innocence. Accused also tendered into evidence document; Sale Tax Number Ex.D1, Registration Certificate Ex.D2, Import and Export Licence Ex.D3 and Central Registration Certificate Ex.D4.

Learned JMIC, Zira, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 19.02.2015.

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

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.

From the perusal of the record, I find that the complainant has not mentioned any date, month, year as to when the loan was advanced to the accused. No other particulars of any type have been mentioned in the complaint. No receipt or security document was got executed while lending such a huge amount of ₹5 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction. Even, record of the firm has not been summoned to show that this loan was given to the firm and has been entered in their account. Otherwise also, if the loan was given to the firm, then there should be some security document or receipt, obtained from the accused.

The defence of the accused is that no amount was ever received from the complainant and no cheque was ever issued to the complainant. It is alleged that complainant does not have any capacity to lend such a huge amount. CW-1 Kapil Dev, complainant, admitted that he is working as Clerk to Advocate at Court Complex Zira. He also admitted in his cross-examination that at no time, ₹1 lakh remained as balance in his savings account with State Bank of India. In cross-examination, he further gave explanation that cheque amount in question was received from his father and commission agent. He took ₹4 lakhs from his father and ₹1 lakh was collected by him in a committee run in the Court compound by Sh.Jagan

Nath, Advocate but neither Sh.Jagan Nath, Advocate nor father of the complainant were examined to support his averment. Otherwise also, it looks improbable that complainant has given ₹5 lakhs to the accused orally without obtaining any document from the accused, especially, to the firm, which will invest that money in the business and earn profit, but no interest was agreed on this huge amount of ₹5 lakhs. Further, it also looks improbable and unnatural that a person giving ₹5 lakhs is not contributing a single penny. The complainant stated that he has taken ₹4 lakhs from his father and ₹1 lakh from the commission agent or from Advocate etc. and this amount has been given without interest. The complainant is neither relative nor friend of accused, then why he will lend huge amount to the accused without obtaining any document.

In cross-examination, the complainant admitted that he never worked at Ludhiana and he never had any business transactions with the firm run by the accused. He also admitted in cross-examination that he does not know what type of business is run by the accused firm and he never visited the shop and house of accused at any time. So, it is clear that complainant is stranger to the accused and it is not believable that a person will lend ₹5 lakhs to a stranger and that too without obtaining any document.

The accused have produced documents Ex.D1 to Ex.D4 showing that they were doing business at Panchkula and not at Ludhiana, which fact shows that even the complainant is not knowing that where the accused are running their business. Keeping in view all these facts, I find that presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused by raising probable defence, which is duly supported and corroborated by the case of the complainant himself as well as from the defence evidence

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 19.02.2015 passed by learned JMIC, Zira, 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.

November 12, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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