

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

**CRM No.A-877-MA of 2015 (O&M)
Date of decision: December 17, 2018**

Gurdeep Bedi

...Applicant

Versus

Raj @ Raj Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Navdeep Monga, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Gurdeep Bedi has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Raj @ Raj Kaur, challenging the impugned judgment dated 26.02.2015 passed by learned Judicial Magistrate Ist Class, Patiala, 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 Gurdeep Bedi filed a complaint against accused Raj @ Raj Kaur under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had agreed to sell the residential house situated at Village Saidkheri, Tehsil and District

Patiala and had received ₹10 lacs from the complainant as earnest money. Thereafter, accused stated some personal hardship to the complainant and agreed to return the aforesaid amount alongwith interest to the complainant and in discharge of the said liability, accused had issued cheque bearing No.956675 dated 25.05.2011 of ₹14,00,000/-, which on presentation for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. 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 deposed regarding original cheque, memo, legal notice, postal receipt. During his cross-examination, complainant brought on record agreement to sell executed in May 2004 as Mark DX. Complainant further examined CW-2 Dr.Inderjit Singh, Handwriting and Fingerprint Expert who opined that disputed signatures tallied with standard signatures. CW-3 Sumit Mittal, Officer, Allahabad Bank, brought the original account opening form of Raj Kaur.

At the close of complainant evidence, accused 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 innocence and false implication. She further pleaded as under:-

“I am innocent. A false complaint has been filed against me by the complainant. I have neither enter into any agreement to sell regarding the alleged plot nor any agreement to sell was ever executed by me. I never issued cheque in question to the complainant nor was under any liability. cheque in question has been misused by complainant which was taken blank signed from my husband Nishan Singh against whom the present complainant also filed a false complaint under section 138 of NI Act under the name of his company Avancer

Finlease. I was not under liability of Rs.14 lacs. I never received notice Ex.C5. In actual in the year 2004 to 2006 complainant financed my husband in the development of a colony in which complainant was also partner. As a security of the finance amount complainant obtained many blank signed and black cheques from my husband and also got executed sale deeds of the land falling in passages as security. The false complaint filed by complainant by misusing the cheque in question and by forging my signatures”.

Learned JMIC, Patiala, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 26.02.2015.

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.

From the perusal of the record, I find that the complainant has not mentioned any particulars regarding agreement to sell. Even, date of agreement to sell is not mentioned in the complaint. Furthermore, no terms and conditions of the agreement to sell have been stated. Secondly, even this agreement to sell has not been produced in the chief-examination by the complainant. This agreement to sell is base of the complaint to show the liability but it has not been proved on record. In cross-examination, the complainant admitted that agreement to sell is Mark DX. Learned trial Court after going through the agreement Mark DX found that earnest money received by the accused from the complainant is ₹1,10,000/- and agreement was thumb marked, though, accused used to put her signatures. The complainant improved his version by stating that ₹8,90,000/- was received in December 2008 but there is no writing to that effect.

Furthermore, this agreement to sell is of the year 2004 and no civil suit or anything has been filed for specific performance of the agreement to sell. Moreover, the case of the complainant that earnest money was taken in installments, is beyond pleadings. There is no such pleading in the present case. As already discussed, there is no evidence on record to show the liability of ₹10 lakhs towards the accused and the complainant has made material improvements while appearing in the Court and his case is contradictory to the documents i.e. agreement to sell, which shows the earnest money as ₹1,10,000/-.

In view of the case of the complainant itself, the presumption under Section 139 of the Negotiable Instruments Act has been rebutted. If there is no liability of ₹14 lakhs, then question of issuing cheque of ₹14 lakhs does not arise. The defence raised by the accused is probable one and presumption has been duly rebutted.

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. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned

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 17, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No