IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-921-MA of 2014 (O&M)
Date of decision:14.02.2018

Pardeep Kumar ... Appellant

Versus

Pandit Gagan Dev Bharti .... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Diwan S. Adlakha, Advocate for the appellant.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of the instant application preferred under Section 378 (4) Cr.P.C. seeking leave to appeal against the order dated 01.04.2014 passed by JMIC, Yamuna Nagar at Jagadhari in the light of which the respondent has been acquitted and exonerated in a complaint under Section 138 of the Negotiable Instruments Act (hereinafter to be referred as 'the Act').

Brief facts are that a complaint was presented by the applicant alleging that the respondent towards discharge of his liability had issued a cheque bearing No.940871 dated 30.10.2012 for Rs.1 lakh drawn on State Bank of India, Branch Jagadhari in favour of the complainant. Upon presentation of the cheque for encashment, the same was returned unpaid with remarks 'funds insufficient' vide bank memo dated 22.12.2012. Thereafter legal notice dated 24.12.2012 was served upon the respondent and upon having failed to make good the payment of the cheque within the stipulated time period of 15 days, the complaint had been filed.

After the stage of preliminary evidence, respondent was

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summoned to face trial for offence punishable under Section 138 of the Act. Having put in appearance, respondent was admitted to bail and was thereafter served with a notice of accusation under Section 138 of the Act to which he pleaded not guilty and claimed trial.

In the ensuing trial and upon due appreciation of evidence adduced on record, the trial Court has taken a view that the cheque in question had not been issued towards discharge of a legally enforceable debt and accordingly has dismissed the complaint. Consequently the instant application seeking leave to appeal.

Counsel has argued that all the necessary ingredients of Section 138 of the Act had been duly proved by leading cogent evidence and moreover since the accused/respondent had not disputed his signature on the cheque as such the presumption under Section 139 of the Act was in favour of the complainant. It is urged that under such circumstances the respondent ought not to have been acquitted. Further argument raised is that the respondent had failed to produce any evidence to rebut the presumption in favour of the complainant and had even failed to submit a reply to the statutory notice that had been served upon him and which in itself was sufficient to prove the offence. It is contended that the trial Court has erred in not drawing an adverse inference against the accused/respondent.

Having heard learned counsel for the applicant/appellant, I am of the considered view that the submissions advanced are without merit

It is by now well settled that a Court seized of a complaint under Section 138 of the Act is expected to examine as to whether the transaction covered by the instrument is genuine and bonafide. In a case where suspicious circumstances surround the alleged transaction, unless a

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satisfactory explanation is tendered by the holder of the instrument, no conviction is legally permissible based solely upon the statutory presumption.

In the present case, admittedly upon an application under Section 145 (2) of the Act having been moved by the accused/respondent for cross examining the complainant and the same having been allowed by the trial Court vide order dated 05.09.2013, the case was fixed for cross examination of the complainant and which was to be considered as a part of defence evidence of the accused. Counsel has conceded that in the cross examination the complainant had stated that he had met the accused for the first time in October, 2012 and at that point of time he was accompanied by his wife. Complainant had deposed that a sum of Rs.1,50,000/- had been demanded by the accused to arrange for a visa to send the complainant abroad. However a sum of Rs.1 lakh had been given in the month of October, 2012 to the accused and which he had taken/borrowed from his father and who in turn had withdrawn the amount from his bank account. He further deposed in his cross examination that when the amount of Rs.1 lakh was given to the accused, his own father as also one Daya Ram, Lamberdar was present.

The trial Court while exonerating the accused has noticed the following suspicious circumstances and in regard to which no cogent justification/explanation has been put forth:

(i) Inspite of the parties not having any previous relationship, the transaction had not been reduced into writing.

(ii) Even though complainant had stated that money was given to the accused in the presence of his own father as also the

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Numberdar of the village, namely, Daya Ram, yet the complainant has chosen not to get his father as also Daya Ram examined so as to prove his case.

(iii) In his cross examination complainant had stated that he had borrowed the sum of Rs.1 lakh from his father who in turn had withdrawn the money from his own bank account but no details/bank statements of withdrawal had been produced on the file by the complainant.

(iv) Even though it was the case of the complainant that the deal had been struck with the accused in the presence of his wife but the complainant has strangely not even examined his wife to corroborate such version.

(v) Yet another suspicious circumstance that has gone unexplained is that the complainant on the one hand has alleged that he met the accused for the first time in October, 2012 and had advanced a sum of Rs.1 lakh in the second week of October, 2012 so as to arrange and procure a visa so as to facilitate his proceeding abroad yet the cheque for return of such amount is dated 30.10.2012 i.e. merely after a period of two weeks only. The version put forth is on the face of it doubtful.

In the considered view of this Court, the impugned judgment exonerating the accused and dismissing the complaint is based on cogent and valid reasoning.

That apart it is equally settled that interference in an appeal would be called for only if the judgment under appeal is found to be

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perverse or based on mis-reading of the evidence. Interference would not be justified merely because this Court was to be inclined to take a different view. Counsel for the applicant/appellant has failed to point out any perversity/mis-reading of the evidence adduced before the trial Court.

For the reasons recorded above, no case for interference is made out. The application seeking grant of special leave to appeal against the impugned judgment dated 01.04.2014 is dismissed and consequently even the accompanying appeal is dismissed.

14.02.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) **Whether speaking/reasoned?** **Yes/No**

ii) **Whether reportable** **Yes/No**

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