

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

CRM No.A-2037-MA of 2018 (O&M)

Date of decision: March 06, 2019

Satya Prakash Upadhyay

...Applicant

Versus

Mrs.Rinki

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kunal Muthreja, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Satya Prakash Upadhyay has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mrs.Rinki, challenging the judgment dated 07.07.2018 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby 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 Satya Prakash Upadhyay filed a complaint against accused Shailender and Rinki under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMJC, Faridabad, are as under:-

alleging therein that Ram Kishan Upadhyay son of Sh. Ram Manorath Upadhyay is the Special Power of Attorney Holder of Satya Prakash Upadhyay and he is fully conversant with the facts of the present complaint and is authorised to conduct all necessary proceedings for and on behalf of the complainant. The accused no. 1 alleged himself as owner in possession of Plot measuring 100 sq. yards, forming part of land bearing Khewat No. 94, Khatoni No. 108, Rect. No. 13, Killa No. 23(4-11), 24(0-4) Rect No. 26, Killa Nos. 2/2(3-15), 3/2(3-9) measuring 11 Kanals 19 Marlas, situated at Mauja Mawai, Tehsil & Distt. Faridabad, on the basis of Sale Deed no. 5362 dated 09.07.2010 and showed their willingness to sell out the said property to the complainant. Accused became ready to sell their said property, for a total sum of Rs. 8 Lacs to the complainant. Accordingly, after believing their words, complainant gave Rs. 6 Lacs as earnest money at the time of agreement to the accused, which was duly executed by them and the complainant in presence of witnesses on 09.10.2013. A separate receipt was also executed in favour of the complainant in presence of witnesses in this regard. Further, it was agreed that the complainant will pay Rs. 2 Lacs to the accused no. 1 on 15.12.2013 as balance payment and after receiving the amount, accused no. 1 will get execute the sale deed in favour of the complainant. On 15.12.2013, the complainant was ready to perform his part of agreement and was ready to make the payment of balance sale consideration to the accused, but on that date the accused showed their inability to perform their part of agreement and did not get execute the sale deed in favour of the complainant. Thereafter, the complainant approached the accused many times in this regard and also paid Rs. 2,20,000/- instead of Rs. 2 Lacs i.e. balance sale consideration on 15.06.2014 and for which the accused issued a separate receipt for the same amount in favour of the complainant on 15.06.2014. In spite of receipt of full and final payment of total sale consideration, accused did not get execute the sale deed in favour of the complainant, till date. When the complainant contacted the accused in this regard, then they again showed their inability to perform their part of commitment and requested the complainant to take back the amount of sale consideration. Accordingly, after admitting their liability, the accused made the payment of the said amount along with interest to the complainant and for which the accused no. 2 being wife of the accused no. 1 issued two cheques No. 064975 dated 26.04.2016 for Rs. 5 Lacs and 064972 dated 26.05.2016 for Rs. 5 Lacs both drawn on Axis Bank Ltd., Mohan Coop. Del, New Delhi in favour of the complainant. When complainant presented the cheque no. 064975 for encashment with his banker i.e. Axis Bank Ltd., HUDA Market, Sector-16, Faridabad, the same was returned back as unpaid on 18.05.2016. The complainant contacted the accused in this respect and they requested the complainant to

represent the said cheque again for encashment and assured that the same would be definitely got encashed. Hence the complainant again presented the said cheque for its encashment, but the same was again return back as unpaid vide return memo dated 14.06.2016 with the remarks "Funds Insufficient". Similarly, the complainant presented the another cheque no. 064972 to his bankers i.e. HDFC Bank Ltd, Sector-16, Faridabad for encashment and the same was returned back as unpaid. The complainant contacted the accused in this respect and accused requested the complainant to represent the said cheque again for encashment and assured that the same would be definitely got encashed. But this cheque was again returned back as unpaid vide return memo dated 22.06.2016 with the remarks "Funds Insufficient". Thereafter, complainant served a legal notice dated 27.06.2016 through his counsel to the accused, but accused did not make the payment. Hence, the complaint."

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 07.07.2018.

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.

Further, from the record, I find that admittedly, agreement was

executed by accused Shailender with the complainant Satya Prakash Upadhyay. Accused Rinki has not entered into agreement to sell with the complainant. Accused Shailender has already been declared proclaimed offender and trial was conducted only qua Rinki. Admittedly, there was no liability towards Rinki payable to the complainant. Rinki has specifically stated that she does not know the complainant and has not handed over the cheque and cheque in question does not bear her signatures.

The complainant himself has not come to the witness box. Rather, his power of attorney holder has appeared in the witness box as CW-1. In his cross-examination, CW-1 stated that Ex.C2 and Ex.C3 do not bear his signature, though he voluntarily stated that both these documents were executed in his presence but he failed to explain if he was present at the time of execution of Ex.C2 and Ex.C3, then why he did not put his signatures on both these documents as witness. This witness also stated that he does not know at which place in Sector-12, both these documents were prepared. Learned Magistrate held that it shows that CW-1 was not present at the time of execution of both these documents and therefore, he has no personal knowledge about these documents. He also admitted in his cross-examination that agreement Ex.C2 was executed in the name of his son and he was not witness to the said agreement. He also admitted that he agreed to purchase the plot after seeing the location. He further admitted that he never met accused Rinki nor she ever gave cheques in question to him. CW-1 further stated that cheques in question were given to him by Shailender. CW-1 himself admitted that he does not know the accused and accused never gave cheques in question. CW-1 admitted the defence of the accused

gave cheques in question to the complainant.

The complainant has not got examined any attesting witness to prove agreement etc. Furthermore, the Court held that if the total sale consideration was ₹8 lakhs, then why ₹8,20,000/- was paid. Moreover, total amount of the cheques in question is 10 lakhs and it is also not explained as to why accused will issue cheques more than the sale consideration. There is also nothing in the evidence that accused Rinki gave cheques to the complainant in discharge of liability of her husband, rather, power of attorney of complainant has stated that she does not know the complainant. The power of attorney holder was also not having personal knowledge regarding the facts of the case.

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 07.07.2018 passed by learned JMIC, Faridabad, 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.

March 06, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No