IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1347-MA of 2017 (O&M)
Date of decision: January 11, 2019

Subash Dheer and another

...Applicants

Versus

Rakesh Kumar Malik

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vishal Munjal, Advocate
for the applicants.

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INDERJIT SINGH, J.

Applicants-Subash Dheer and Smt.Anshu Dheer have filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Rakesh Kumar Malik, challenging the impugned judgment dated 23.03.2017 passed by learned Addl. Chief Judicial Magistrate, Pathankot, 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, complainants Subash Dheer and Smt.Asnhu Dheer filed a complaint against accused Rakesh Kumar Malik under Section 138 of the Negotiable Instruments Act. As per complainants' version, accused was having friendly relations with the complainants and approached them on 16.12.2014 and demanded ₹5 lakhs as friendly loan.

Complainants advanced an amount of ₹5 lakkhs to the accused on 16.12.2014 through cheque and accused promised to return the same within one year. When complainants approached the accused, then in order to discharge, accused issued a cheque bearing No.099741 of ₹5 lakhs dated 25.02.2016, which on presentation for encashment was dishonoured with the remarks 'funds insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Complainant Subash Dheer examined himself as CW-1 and proved documents; statement of account Ex.C1, cheque Ex.C2, memo Ex.C3, legal notice Ex.C4 and postal receipt Ex.C5.

At the close of complainant evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainants and he denied all the incriminating evidence against him and pleaded his false implication. He further stated that he never gave cheque to the complainants. The complainants have taken contradictory false ground in this complaint as he has already lodged one FIR in the police station with regard to the same cheque in which he has taken stand that complainants gave money for sending his son abroad. Accused also tendered copy of FIR as Ex.D1.

Learned ACJM, Pathankot, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 23.03.2017.

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, I find that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, accused has raised probable defence. The version of the complainant in the complaint itself is contradictory to the FIR Ex.D1. In the FIR, which was got registered on 05.07.2016, case of present complainant against the accused is that accused was knowing the complainants and accused told him that he used to send boys to foreign country and he promised to send son of the complainant to Canada against payment of ₹20 lakhs. Earlier, the complainant gave ₹5 lakhs along with passport to the accused and then on 16.12.2014 through cheque, ₹5 lakhs was given to the accused. Further, ₹5 lakhs was given on 29.12.2014. Thereafter, ₹2 lakhs through cheque was given on 27.01.2015 and ₹3 lakhs was given on 12.02.2015 to the accused. The same cheque which was given on 16.12.2014 is mentioned in the complaint. In the FIR, it is the case of the complainant that this money has been paid for sending his son to Canada but in the complaint, it is stated that money has been given as friendly loan and the accused agreed to return the same within one year. In the complaint, there is no mention regarding sending son of the complainant to foreign country or settlement in ₹20 lakhs or paying of other amounts etc., which fact itself shows that case of the complainant is totally contradictory with the FIR, which means that there is no such transaction of ₹5 lakhs as friendly loan to the accused. The accused has rebutted the presumption by raising probable defence which is duly supported and corroborated from the case of the complainant itself as well as 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 findings can be held as perverse or against the evidence and law.

In view of the above discussion, I find that the impugned judgment dated 23.03.2017 passed by learned ACJM, Pathankot, 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.

January 11, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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