IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-2660-MA of 2018 (O&M)
Date of decision: August 22, 2019

M/s Barkat Ram Harmesh Kumar Jain

...Applicant

Versus

Kulwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Manish Kumar Singla, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-M/s Barkat Ram Harmesh Kumar Jain has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Kulwinder Singh, challenging the impugned judgment dated 17.09.2018 passed by learned Sub Divisional Judicial Magistrate, Jaitu, 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 M/s Barkat Ram Harmesh Kumar Jain filed a complaint against accused Kulwinder Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, complainant is running his firm at Jaitu under the name and style of M/s Barkat Ram Harmesh Kumar Jain, Jaitu District Faridkot. The

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complainant is proprietor of his firm. Few months ago, accused/respondent had borrowed a loan of ₹9 lakhs from the complainant firm for his personal need and promised to repay the same on demand by the complainant. In discharge of his legal liability, accused issued a cheque beaering No.140155 dated 12.02.2014 for a sum of ₹9 lakhs, which on presentation for encashment was returned dishonoured with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned SDJM, Jaitu, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 17.09.2018.

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.

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 security document was got executed while lending such a

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huge amount of ₹9 lakhs to the accused. All these facts are fatal to the case of the complainant in view of the law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028***.

Further, the defence took by the accused is that he never borrowed any loan from the complainant nor he was under any debt. He did not sign or issued the cheque in dispute to the complainant. It is also the defence of the accused that he was customer of complainant firm and therefore, his cheque book and pass book used to remain in possession of the firm. The complainant might have deposited some amount in his account and thereafter the complainant might have withdrawn the same. He never borrowed any amount from the complainant firm nor he was under any liability to pay any amount to the complainant firm.

In defence, accused got examined DW-1 Vinod Kumar, Branch Manager, SBI Jaitu. The accused tendered in evidence documents; copy of cheque dated 16.12.2013 Ex.D1, copy of overleaf Ex.D2; certified copy of account statement of Kulwinder Singh Ex.D3; certified copy of judgment dated 06.12.2012 Ex.D4; decree sheet Ex.D5; copy of plaint Ex.D6 and Ex.D7; and certified copies of statements Ex.D8 and Ex.D9. Thereafter, the evidence of the accused was closed.

Learned trial Court held that to rebut the presumption, accused relied upon testimony of CW-3 Mangesh Kumar, who has deposed as LR of proprietor/deceased Harmesh Kumar Jain. He has no personal knowledge about the facts of the case. He categorically claimed that his brother namely Damman Jain is running the business and account books of the firm used to remain in his care and custody. It is also claimed by him that only Damman Jain is aware about the transactions. He also deposed that no such cheque

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was issued by the accused in his presence. The Court held that no positive evidence has been led by the complainant in support of the allegations leveled by it in the present case. CW-3 himself has claimed ignorance about the facts of the present case. The business of the complainant is run by Damman Jain but Damman Jain has not been examined by the complainant, who is material witness. Furthermore, Damman Jain is the signatory to the document Ex.CW4/B and Ex.CW4/C. Learned trial Court further held that complainant intentionally shielded Damman Jain from cross-examination and he was not examined intentionally by the complainant party. Due to this, half truth has come on record from complainant side.

Learned Magistrate further held that as per testimony of CW-4 Gifty Gupta, Damman Jain deposited the amount of ₹9 lakhs in the account of the accused vide cheque Ex.CW4/B. He is the signatory of the cheque on behalf of the complainant firm. The said amount was deposited on 16.12.2013, which is shown vide voucher Ex.CW4/C. On the same day i.e. on 16.12.2013, cheque Ex.D1 is claimed to have been issued by the accused for ₹9 lakhs and cheque is issued as "self" cheque i.e. the cheque was issued for the payment to the bearer of the cheque but cheque amount was not withdrawn by the accused. The cheque amount was withdrawn by Damman Jain on 16.12.2013. His signatures appear on the rear side of the cheque Ex.D2. The transactions regarding deposit and withdrawal of the amount were on the same date i.e. 16.12.2013 by Damman Jain, as shown in the statement of account and non-examination of Damman Jain is fatal to the complainant's case. Complainant's LR who appeared as a witness, was not knowing the transactions. All these facts are to be explained by Damman Jain, who was intentionally withheld from examination.

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In the present case, the defence raised by the accused is probable and presumption has been duly rebutted.

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 17.09.2018 passed by learned SDJM, Jaitu, 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.

August 22, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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

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