IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-338-MA of 2016 (O&M)
Date of decision: March 11, 2019

Kulwant Singh Dhillon

...Applicant

Versus

Puran Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Subhash Godara, Advocate for
Mr.S.S.Dinarpur, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Kulwant Singh Dhillon has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Puran Singh, challenging the impugned judgment dated 10.12.2015 passed by learned Judicial Magistrate Ist Class, Chandigarh, 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 Kulwant Singh Dhillon filed a complaint against accused Puran Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, in discharge of existing legal liability, accused issue cheque bearing No.271654 dated 27.08.2011 for ₹20,00,000/- in favour of the complainant, which on presentation for encashment, was returned back unpaid with the remarks "Insufficient Funds". 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 CW-2 Varun Ahuja, Assistant Manager.

At the close of complainant evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him and pleaded his innocence and false implication. He further pleaded that he had lost cheque in question along with a bag containing other documents, regarding which he got registered DDR No.42 dated 05.05.2011 at Police Station-Chheharta, Amritsar. He never received an amount of ₹20,00,000/- from complainant for sale deed of any property. He also pleaded that he has purchased the property in question for ₹11,25,000/- from his own funds vide agreement to sell and sale deed Ex.CW1/D1 and Ex.CW1/D2. He further stated that complainant has instituted instant complaint for blackmailing and for compelling him to sell the property in question to complainant at throwaway price. In defence, accused examined DW-1 Nishant, Asstt. Manager, HDFC Bank.

Learned JMIC, Chandigarh, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 10.12.2015.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Lower Court record was also requisitioned.

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 receipt or security document was got executed while lending such a huge amount of ₹20 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction. No income tax return has been produced to show the lending of the amount in question to the accused. All these facts are fatal to the case of the complainant as per law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028***.

The perusal of the impugned judgment shows that in cross-examination, the complainant deposed that cheque has been issued by accused in discharge of liabilities of the land, that was to be transferred by accused in his name. He further deposed that complete body of cheque in question has been filled by his employee Kala Singh and thereafter cheque has been signed by accused. He denied that the lost cheque of accused has been found, filled and misused by him by forging the signature of accused. He was shown the DDR No.42 dated 05.05.2011 Mark-A regarding the loss of said cheque. He further deposed that accused was not dealing in the property and had no office at Amritsar, but was working with him on commission basis for looking after his property at Amritsar. Complainant further deposed in the cross-examination that he had made payment of ₹20,00,000/- to accused at the residence of Dr.Harinder Singh Sandhu. No direct payment was made by him to the seller of the property, intended to be purchased by him through accused. He admitted that he has got an FIR Mark-B registered against the accused and also admitted that an FIR Mark-C has been registered against him. He also admitted that property has been purchased by accused in his name for sale consideration of ₹11,25,000/- as per Ex.CW1/D1 and Ex.CW1/D2. He was not able to tell as to how the amount of ₹20,00,000/- allegedly paid by him to accused, was required to be utilized for payment of earnest money, sale consideration and stamp duty etc. He was not aware if accused had taken a loan for purchasing the property in question.

The defence of the accused is that he had lost cheque in question along with a bag containing other documents, regarding which he got registered DDR No.42 dated 05.05.2011 at Police Station Chheharta, Amritsar. He never received an amount of ₹20,00,000/- from complainant for sale deed of any property. He has purchased the property in question for

₹11,25,000/- from his own funds vide agreement to sell and sale deed Ex.CW1/D1 and Ex.CW1/D2. DW-1 Nishant, Asstt. Manager, HDFC Bank, could not produce the relevant record regarding dishonour of cheque Ex.C1. He deposed that cheque was misplaced from the bank, therefore scanned copy of same has been given to the complainant on dischonour of cheque.

Keeping in view the facts and circumstances of the present case, evidence produced by the complainant and his cross-examination, I find that presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused by raising probable defence.

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 10.12.2015 passed by learned JMIC, Chandigarh, 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 11, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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