IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1775-MA of 2014 (O&M)
Date of decision: July 25, 2019

Ravi Raj

...Applicant

Versus

Satpal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Virender Kumar, Advocate for the applicant.

Mr.Parminder Singh, Advocate for the respondent.

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INDERJIT SINGH, J.

Applicant-Ravi Raj has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent Satpal, challenging the impugned judgment dated 20.08.2014 passed by learned Judicial Magistrate Ist Class, Karnal, 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 Ravi Raj filed a complaint against accused Satpal under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused borrowed an amount of ₹3 lakhs from the complainant as a friendly loan. In discharge of this liability, the accused issued a cheque bearing No.925482 dated 15.02.2010 for ₹3 lakhs, in favour of the complainant, which on presentation for encashment was returned back 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 CW-1 Sandeep Kumar, Official of Canara Bank and examined himself as CW-2 and tendered documents; cheque, memo, legal notice, postal receipt and Regd. Envelop.

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.

Learned JMIC, Karnal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 20.08.2014.

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

Notice of the application was issued. Learned counsel for the respondent appeared and contested the application.

I have heard learned counsel for the parties 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 huge amount of ₹3 lakhs to the accused. There is no document on record to show the loan transaction. No income tax return has been shown to prove the transaction. 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***.

The defence of the accused in this case is that complainant is his commission agent. Blank signed cheque was given as security to the complainant, which has been misused. No such amount has been taken.

Learned Magistrate, on the basis of evidence, held that complainant tendered the certified copy of the statement of account issued by Manager, Canara Bank, Karnal, wherein, it is mentioned that amount of ₹3 lakhs was credited in the account of accused on 03.11.2006. Firstly, in the complaint, it is nowhere the case of the complainant that he gave money on 03.11.2006 through cheque. Rather, the case of the complainant is that accused promised to repay the amount shortly, which means that the loan might have been advanced in the end of year 2009 or early 2010. There is no other document to show any transaction of this amount on 03.11.2006. Furthermore, as per the complainant, only ₹3 lakhs has been paid but in the complaint, he stated that cheque of ₹3 lakhs was given by the accused as part payment. There is nothing in the complaint that any interest was agreed. Then, how it can be held as part payment. Moreover, as already discussed, there is no document on record of any type to show the loan transaction. The complainant, in the evidence, has admitted that he has commission agent shop but no account books have been produced to support the version of the complainant.

In the present case, the accused has raised probable defence which is supported by the case of the complainant as well as defence evidence 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 20.08.2014 passed by learned JMIC, Karnal, 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.

July 25, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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