IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1885-MA of 2015 (O&M)
Date of Decision: 29.07.2019

Sunder Lal ...Applicant

VERSUS

M/s Prime Real Infra Ltd. and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None.

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SURINDER GUPTA, J.

Applicant has filed application (CRM-A-1885-MA-2015) under Section 378 (4) Cr.P.C. seeking grant of leave to appeal against judgment dated 31.08.2015 passed by learned Judicial Magistrate Ist Class, Gurgaon (now 'Gurugram'), whereby complaint filed by the applicant for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (later referred to as "the Act") was dismissed and respondents no. 1 and 2 were ordered to be acquitted.

BRIEF FACTS:-

2. As per case of complainant, he is a well reputed and well established property consultant in the field of real estate. Respondent no. 1 through respondent no. 2 sought consultancy service for sale of FSI of a group housing and one commercial project at Gurugram, worth ₹150 to ₹200 crores. To provide consultancy the applicant had to involve many professionals for which respondents agreed to make payment and issued cheque no. 095139 dated 03.03.2011 for a sum of ₹2 crores drawn on Lord Krishna Bank Ltd. Ansal Plaza, Mathura Road, Faridabad-01. The cheque when presented with bank was dishonoured for want of sufficient funds.

The applicant issued statutory notice to respondents calling upon them to make payment of cheque amount, which was, however, not made and complaint for offence punishable under Section 138 of 'the Act' was filed in the Court of Chief Judicial Magistrate, Gurugram. After recording preliminary evidence, respondent no. 2 was ordered to be summoned. Finding a *prima facie* case for offence punishable under Section 138 of 'the Act', respondent no. 2-Hemant Kapoor was served with notice to which he pleaded not guilty and claimed trial.

3. In support of his case, applicant appeared as CW-1 and examined Shamsher Singh as CW-2, Abhishek Mehrotra as CW-3 and Gulab Singh, Patwari as CW-4. On completion of evidence of prosecution, statement of respondent no. 2-Hemant Kapoor under Section 313 Cr.P.C. was recorded, wherein he denied all the allegations against him and pleaded his false implication. He examined Balraj son of Rati Ram as DW-1 and himself appeared as DW-2.

4. Learned Magistrate discarded version of applicant that cheque of ₹2 crores was issued by respondents in discharge of his legal liability towards applicant and ordered his acquittal.

5. Before proceeding further, it will be relevant to take note of the fact that notice of accusation was only issued to Hemant Kapoor in his personal capacity and not as director of M/s Prime Real Infra Ltd. No notice was issued to the company through its director Hemant Kapoor.

6. On taking note of the above fact, I proceed to decide the application filed by the applicant on merit.

7. The question, which arises for consideration, is as to whether cheque of ₹2 crores drawn on Lord Krishna Bank Ltd. was issued to

applicant for providing consultancy service to respondents. Though, applicant claims that he provides consultancy service in the field of real estate and is in this business for the last 8/9 years but in his cross-examination he admitted that he is not having any registration as consultant or with Service Tax Department. He has stated that he arranged 8 acres of land for a commercial project in village Begampur Khatola, Gurugram. That land belongs to Rati Ram and Ram Kumar. However, he has not produced any document on record in this regard. He has further stated that respondent no. 2-Hemant Kapoor had asked for 8 to 10 acres of land in Section 73, Gurugram, which he arranged through collaboration. Though, he claims to be a consultant but has specifically stated that he has not filed income tax return. He has further admitted that the date on which the cheque of ₹2 crores was issued to him Lord Krishna Bank Ltd. was not in existence. He was not aware if the land which was arranged by him through collaboration is in possession of the company or not.

8. To rebut the contention of applicant, respondent had examined Balraj son of Rati Ram, whose land the applicant alleged to have arranged through collaboration for project of respondent. He has stated that applicant is not known to him. He or his father never met the applicant. No transaction regarding their land ever took place through the applicant. They never executed any collaboration agreement. His father is still owner of his entire land and is cultivating the same of his own. He or his father have not even met Shamsher Singh.

9. Respondent no. 2-Hemant Kapoor himself appeared as DW-2. He has denied that any collaboration agreement was executed with Rati Ram. His land was in fact an agricultural land and is under litigation, as

such, the question of entering into collaboration agreement with Rati Ram was not feasible. The land, mentioned in collaboration agreement (Ex. P5/B) belongs to Dr. Kanwar Singh, Ram Kumar and Desh Raj all sons and legal heirs of Chhotu Ram and is agricultural land and does not come under the definition of FSI at the time of alleged collaboration agreements.

10. Learned Magistrate took note of the entire evidence on record and observed that applicant has not been able to produce any documentary evidence regarding consultancy provided by him and collaboration agreements. Applicant has alleged the collaboration agreement regarding land of Rati Ram and Ram Kumar but the revenue record produced on file show that Rati Ram had never sold his land to anybody. The land was sold by Ram Kumar, Dr.Kanwar Singh and Desh Raj to M/s DLF Ltd. Gurugram vide sale deed dated 25827 dated 05.02.2014, as such, respondents never came in possession of the land, which is subject matter of the collaboration agreements (Ex. P5/A and Ex. P5/B), which were also not duly proved on record. The collaboration agreements pertain to year 2007 but the cheque in question was alleged to have been issued on 03.03.2011 after expiry of more than four years and there is no explanation for such a delay of four years in issuance of the cheque after providing alleged consultancy service before 2007. Learned Magistrate also took note of the plea of applicant that he had provided consultancy service in respect of the land of FSI of group housing scheme and a commercial project at Gurugram but in cross-examination the applicant had stated that he managed the land measuring 8 acres by way of collaboration agreements for the respondent-company for their commercial project at Sector 73, village Begampur Khatola, Gurugram. The date, month and year in which the consultancy service was

provided was also not disclosed.

11. Learned Magistrate took note of the copy of statement of accounts (Ex. D2), which shows that the cheque bearing nos. 095140, 095141 and 095143 were got encashed by Shamsher Singh on 25.04.2012. The other cheques of this series were also got encashed in the same year. In these circumstances, issuance of cheque bearing no. 095139 in the year 2011 certainly becomes doubtful. It is quite strange that applicant is entering into such a deal of huge amount and is not having any licence or registration with Service Tax Department or even filing his income tax return. All this indicate that claim of applicant was based on falsity and he had concealed real facts relating to issuance of cheque in dispute, which was certainly not for discharge of any legal liability towards the applicant. Learned trial Court has committed no error while analyzing the evidence on record and acquitting the respondents.

12. I find no infirmity in the order passed by learned Magistrate so as to allow the leave to file appeal. This application has no merit and the same is dismissed.

(SURINDER GUPTA)
July 29, 2019 **JUDGE**
jk

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***