IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1181-MA of 2017 (O&M)
Date of decision: January 31, 2019

Harkirat Singh

...Applicant

Versus

Karamjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravish Bansal, Advocate
for the applicant.

Mr.H.S.Bhullar, Advocate
for the respondent.

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INDERJIT SINGH, J.

Applicant-Harkirat Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Karamjit Singh, challenging the impugned judgment dated 27.02.2017 passed by learned Judicial Magistrate Ist Class, Faridkot, 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 Harkirat Singh filed a complaint against accused Karamjit Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, he is the proprietor of M/S

Lucky Jewellers, Near Clock Tower, Faridkot and deals in gold and silver ornaments. The complainant stated that he maintains his accounts books regularly in ordinary course of his business and he is also sales tax and income tax assessee. The complainant alleged that he and accused are well known to each other for the last more than about five years as accused used to come to his jewelery shop for the purchasing gold ornaments. Accused used to take the gold ornaments on cash and sometimes on credit. As per the complainant, the accused from 01.04.2009 till 29.06.2009 purchased gold jewelery/ornaments on credit from him on different dates and the gold so purchased by him is for ₹20,56,064/-. From 01.04.2009 till 12.05.2009, accused purchased gold on different dates for 10 times of different quantity and the entire purchase was on credit. As per the complainant, he asked the accused to clear the amount and on 12.05.2009, accused paid ₹29,420/- and ₹930/- which were duly credited in the account of the accused. Again from 12.05.2009 till 26.06.2009, accused started purchasing the gold ornaments on credit. As per complainant, on 29.06.2009, amount of ₹20,25,714/- was due towards the accused. To discharge this liability, the accused issued cheque bearing No.103075 dated 29.06.2009 for ₹20,25,714/-, which on presentation for encashment was returned back with the remarks 'payment stopped by the Drawer'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1, CW-2 Balwinder Singh, Special Assistant, Union Bank of India and CW-3 Gopal Krishan Garg, Income Tax Advocate.

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. In defence, accused examined DW-1 Gitanjli, Execution Clerk, DW-2 Head Constable Chamkaur Singh, DW-3 Sukhwinder Singh, Registration Clerk, DW-4 Jagjit Singh, DW-5 Jagtar Singh, DW-6 Amarjit Singh, DW-7 Prem Singh, DW-8 Jasvir Kaur, DW-9 Jhirmal Singh, DW-10 Bikkar Singh, DW-11 Balwinder Singh, Assistant Manager, Union Bank of India, DW-12 Anil Kumar, Handwriting and Fingerprint Expert and DW-13 Shalinder Singh, Clerk.

Learned JMIC, Faridkot, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 27.02.2017.

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.

Lower Court record was also requisitioned.

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 no specific particulars have been mentioned that on which date, how much quantity of gold, of what value and what kind of articles have been purchased by the accused on credit. The complainant produced some copies of bills but these do not bear signatures of the accused. These are the documents in ones own favour. The complainant was asked to produce on record documents but he refused to do so. Even account books of earlier period have not been produced. None of the document has been produced which is signed by the accused to show that ornaments have been purchased on credit and there is no such cogent evidence to show this fact. Neither the particulars have been given in the complaint nor at the time of evidence that on how much quantity of gold and what kind of gold articles were purchased, which supports the defence version that these articles were not purchased by the accused.

Furthermore, legal notice Ex.C14 was issued by the complainant to the accused and accused has replied to it, vide which accused asked for the documents showing sale of gold ornaments on credit but the complainant did not replied to the reply sent by the accused. Learned trial Court held that it looks strange that ornaments worth lacs of rupees were purchased on credit by the accused as claimed by the complainant but he did not obtain his signatures on any of the bill in order to keep a proof that the gold ornaments had been purchased by the accused from the complainant. No other document has been placed on record to show that accused has purchased gold ornaments from the complainant.

In cross-examination, the complainant deposed that he did not remember which gold ornaments were purchased by the accused from him.

Learned Magistrate held that it is surprising that gold ornaments were allegedly sold by the complainant to the accused, but the complainant is not aware as to which gold ornaments were sold by him to the accused. Further in cross-examination, the complainant stated that the ornaments, which were purchased by the accused from him, were those which could be used in home. In view of all these facts, learned Court below held that this case is covered by the law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028***.

Further, CW-3 Gopal Krishan Garg, in his cross examination has stated that the capital of the complainant in Ex.C39, which is the computation of the income of the complainant pertaining to the assessment year 2008-09, was shown as ₹8,45,740/- and the closing was shown as ₹9,96,442/-. CW3 also stated that the gold stock was shown as ₹11,47,154.00 and purchase of the gold was shown to be that of ₹8,45,840.00. These facts also support the defence version.

In the present case, the accused has raised probable defence, which is supported and corroborated by the case of the complainant itself 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 27.02.2017 passed by learned JMIC, Faridkot, 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 31, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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