

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1044-MA of 2015 (O&M)

Date of decision: August 27, 2015

Harjit Singh

...Applicant

Versus

Gurinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.M.K.Singla, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Harjit Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Gurinder Singh, challenging the judgment dated 27.04.2015 passed by learned Addl. Chief Judicial Magistrate, Sangrur, whereby the complaint filed by the applicant was dismissed and accused-respondent was acquitted. Along with the application, appeal has been filed.

It is mainly stated in the application that accused has been wrongly and illegally acquitted by learned ACJM, Sangrur, vide judgment dated 27.04.2015 and the same deserves to be set aside on the grounds given in the grounds of appeal.

I have gone through the record and have heard learned
counsel for the applicant.

From the record, I find that Harjit Singh, complainant filed a complaint against Gurinder Singh under Section 138 of the Negotiable Instruments Act, wherein it is stated that accused had borrowed a sum of ₹1,60,000/- for his urgent business need as he was on friendly terms with the complainant and agreed to repay back the same within three months. In discharge of his legal liability, the accused Gurinder Singh had issued cheque bearing No.939009 dated 30.11.2012 drawn on State Bank of Patiala, Bhawanigarh in favour of the complainant from his account with the assurance that the cheque would be honoured on its presentation. When the cheque was presented, it was dishonoured vide memo dated 04.02.2013 with the remarks 'Insufficient Funds'. Legal notice dated 08.02.2013 was served upon the accused and then the present complaint has been filed.

Learned ACJM, Sangrur, on the basis of the evidence produced by the parties, acquitted the accused-respondent.

I have gone through the record and the judgment passed by learned ACJM, Sangrur.

From the record, I find that learned ACJM, Sangrur has discussed presumption in favour of the complainant but held that the accused can rebut the presumption either by cross-examining the witnesses of the complainant or by leading defence evidence. It is the case of the accused that he used to sell his crop with commission agent of Bhawanigarh namely Narinder Singh. Said Narinder Singh had taken the cheque as security from the accused. The said

Narinder Singh has not returned the said blank cheque to him on the ground that he has misplaced the cheque, whereas he had paid the entire loan amount to Narinder Singh. It is further case of the accused that complainant is the man of Narinder Singh, who connived with complainant by filling the amount and the date on the cheque. The accused further stated that he has no concern with the present complainant.

Learned ACJM, Sangrur, while appreciating the evidence held that complainant has admitted the fact that he is having close association with Narinder Singh, who was earlier doing the business of commission agency, which now has been closed for the last about 2 years i.e. from 2012. It is also on the record that Nirbhey Singh, father of Narinder Singh was murdered and said Narinder Singh along with present complainant Harjit Singh, were arrested on the charges of having murdered Nirbhey Singh and both of them remained in custody. The complainant evaded the reply to the effect whether Baldev Singh was 'muneem' of Narinder Singh, despite the fact that complainant must be knowing the name of muneem of Narinder Singh due to his close association with him. It is in the cross-examination of the complainant regarding his capacity to pay such an huge amount, that he is only 10+2 pass. The complainant has not produced on record the bank details or statements of account with the view of money transaction. This amount has not been withdrawn from any bank. The complainant is not an income tax assessee. The complainant has stated that he was having some amount at his house

and he had taken some money from his commission agent for the purpose of giving the loan to the accused. No particulars of commission agent have been given nor any commission agent was examined nor any such record has been produced to prove this fact. Otherwise also, it look unnatural that a person will give loan to another after himself borrowing loan from a commission agent.

From the cross-examination of the complainant, learned ACJM, Sangrur also reached to the correct conclusion that complainant does not know the details about the accused. He was not knowing whether the accused Gurinder Singh is married or how many children he has. He has never attended any function of Gurinder Singh nor the complainant has ever invited accused at his house. He has never talked on mobile with Gurinder Singh. All this cross-examination shows that accused is having no close relations with the complainant.

Further, from the evidence, the Court reached to the conclusion that the date on the cheque has been written in some different ink and body writing in whose favour cheque has been drawn, has been written in different pen ink whereas the amount has been filled in some different ink, which shows that the cheque has been filled on three different occasions. The complainant also admitted in the cross-examination that there are different inks on the cheque in question. DW-1 Baldev Singh, muneem of Narinder Singh commission agent was summoned, who deposed that accused Gurinder Singh was selling his crop through commission agency of

Narinder Singh. He also stated that cheque in question was issued by accused in his presence as a security towards the outstanding liability of accused. He further stated that Gurinder Singh had paid the amount of ₹1,60,000/- to Narinder Singh but the cheque in question was not returned.

Learned ACJM, Sangrur has appreciated the evidence in right perspective and correctly acquitted the accused.

From the record, I find that nothing has been pointed out as to which evidence has been misread by the Court below or which material evidence has not been discussed by the Court below. There is nothing on the record to show as to how the findings given by the Court below are perverse. Therefore, I find that the findings given by learned ACJM, Sangrur, are correct, as per evidence and law.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

August 27, 2015
Vgulati

(INDERJIT SINGH)
JUDGE