

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-461-MA of 2015 (O&M)
Date of decision: November 03, 2015

Sukhdev Singh

...Applicant

Versus

Baldev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kanwal Goyal, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-Sukhdev Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Baldev Singh, challenging the judgment dated 16.12.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, whereby the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that learned JMIC, Jalandhar has wrongly acquitted the above-said accused against law and evidence on record, so his acquittal be set aside and he be punished in accordance with provisions of law.

I have heard learned counsel for the applicant and have gone through the record, especially the judgment passed by learned JMIC, Jalandhar.

As per the record, the complainant Sukhdev Singh filed a complaint against Baldev Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, the accused has taken a sum of ₹3 lacs from him as a friendly loan from time to time for his household needs with the promise to return the same on demand and in order to discharge this liability, accused issued a cheque bearing No.018208 dated 01.02.2012 for ₹3 lacs drawn on State Bank of Patiala, Kapurthala in favour of the complainant, which on presentation, was dishonoured with the remarks 'funds insufficient'. Legal notice was issued and then on non-payment of amount, the complaint was filed.

Learned JMIC, Jalandhar, after appreciating the evidence, acquitted the accused of the charges framed against him vide impugned judgment dated 16.12.2014.

From the record, I find that learned JMIC, Jalandhar has discussed the evidence in right perspective. 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. The perusal of the findings given by the Court below show that it cannot be held as perverse or against the law. In the complaint, it is the case of the complainant that loan was given from time to time but no particulars were given as to when and how much amount has been given. No dates, months and years have been mentioned in the complaint. Neither any specific date on which amount has been given nor any other fact has been mentioned as to whether the amount has

been given on the basis of documents etc. There is nothing that in whose presence and at which place the amount was given. When the complainant came into witness box, he took totally different stand by stating that the amount has been given to the accused by way of cheque of ₹3 lacs drawn on State Bank of India and he also got examined CW-2 Assistant-cum-Cashier, State Bank of India. The Court after appreciating the evidence and specially the statement of accounts Ex.CW2/2, held that no such entry regarding the withdrawal of sum of ₹3 lacs by way of cheque has been specifically pointed out by the complainant. The Court also held that nothing has been stated by the complainant as to on which date, said amount of ₹3 lacs has been given to the accused. The Court held that no specific entry has been proved on record by the complainant to establish the fact that alleged amount of ₹3 lacs has been given to the accused by way of particular cheque number. The Court below also held that no corroborative entry regarding the encashment of cheque was shown in the statement of accounts of the accused. The Court further held that it cannot be believed that ₹3 lacs has been given to the accused by way of cheque.

The complainant also failed to prove source of such a huge amount. Furthermore, the Court also held that statement of complainant is contradictory to the version given in the complaint. The complainant is working as commission agent. He has not produced on record his account books to show entry regarding advancement of loan to the accused. Rather, in cross-examination,

he has stated that he has not reflected the said amount in books of account. The Court in the facts and circumstances of the case held that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused.

In view of the above discussion, I find that the findings given by learned JMIC, Jalandhar, are as per evidence. In no way, the findings can be held as perverse. The judgment dated 16.12.2014 passed by learned JMIC, Jalandhar, is correct, as per law and evidence.

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.

November 03, 2015
Vgulati

(INDERJIT SINGH)
JUDGE