

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.A-747-MA of 2012 (O&M) in/and
CRA No.S-135-SB of 2012 (O&M)
Date of decision: October 25, 2016**

Kuldip Singh

...Applicant

Versus

Tarsem Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.P.Soi, Advocate
for the applicant.

Ms.Manjari Joshi, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Kuldip Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Tarsem Lal, challenging the impugned judgment dated 15.10.2011 passed by learned Addl. Sessions Judge, Jalandhar, whereby the appeal filed by the accused-respondent against the judgment of conviction and order of sentence dated 29.09.2010 passed by learned Judicial Magistrate Ist Class, Jalandhar, was allowed and he was acquitted of the charge framed against him.

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, the complainant Kuldeep Singh filed a complaint against accused Tarsem Lal under Section 138 of the Negotiable Instruments Act. As per complainant's version, he was having friendly relations with the accused and in the month of May 2004, accused was in need of monetary assistance, as such, he requested the complainant and keeping in view the problem of accused, he gave ₹2 lacs as a friendly loan to the accused. The accused in order to discharge his legal enforceable liability, issued a cheque bearing No.607117 dated 08.06.2004 for a sum of ₹2,00,000/- in favour of the complainant, which on presentation before the bank for encashment, was returned back unpaid with the remarks 'Fund Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1 and after tendering documents, closed the evidence. On the other hand, the case of the accused in statement under Section 313 Cr.P.C. was that he has been falsely implicated by the complainant. The accused did not examine any witness but produced documentary evidence on file i.e. Mark-A copy of the General Power of Attorney executed by wife of accused in favour of the wife of the complainant, Mark-B copy of cancellation deed, Mark-C copy of sale deed, Mark-D copy of plaint of civil suit bearing No.203/07, Mark-E copy of order dated 11.06.2008 and Mark-F copy of the FIR.

Learned JMFC, Jalandhar, after appreciating the evidence, convicted and sentenced accused Tarsem Lal under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of ₹2000/- and in

default of payment of fine, to undergo imprisonment for a period of one month. An appeal was filed by accused-respondent and learned Addl. Sessions Judge, Jalandhar, accepted the appeal and acquitted the accused-respondent vide impugned judgment dated 15.10.2011.

Aggrieved from impugned judgment dated 15.10.2011, present application seeking leave to appeal has been filed by the complainant-applicant.

Notice of motion was issued and 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 judgment passed by learned Addl. Sessions Judge, Jalandhar shows that findings have been given as per evidence and law. The evidence has been appreciated in right perspective. In no way, the findings given by learned Addl. Sessions Judge, Jalandhar can be held as perverse or against the law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by learned lower Appellate Court. In the appeal, appellate Court is to re-appreciate the evidence and has every right to take second view, which is favourable to the accused.

Learned Addl. Sessions Judge, Jalandhar, after discussing the evidence held that as per the case of the complainant, ₹ 2 lacs was given in May 2004 and in order to repay the the loan amount, post dated cheque in question dated 08.06.2004 was issued by the accused. The stand taken by the accused is that his wife had raised a loan of ₹ 1 lac from wife of the

complainant and at that time, she had obtained General Power of Attorney with regard to the property i.e. house owned by her and two blank cheques from accused to secure repayment of that amount.

From the statement of Kuldeep Singh, learned lower Appellate Court held that name of wife of the complainant is Paramjit Kaur and name of his son is Harcharan Singh and all of them reside in same house. The complainant was further cross-examined and he stated that he knows Tarsem Lal only and not any of his family member though he had seen them personally. He further admitted that lastly accused and his wife had come to their house on 25.05.2004 in connection with the loan. He further stated that he had not given the loan to him at that time and loan was given on 26.05.2004, which is not pleaded by him at all.

Learned Addl. Sessions Judge, Jalandhar, while appreciating the cross-examination of the complainant, held that at one place the complainant says that he knows accused Tarsem Lal and his wife and his family for the last 10-12 years, which is contrary to his previous statement, where he stated that he does not know them personally. He did not admit or deny that in the month of May 2004, Surinder Kaur wife of accused was in need of ₹ 1 lac or she had approached his wife in this regard. The complainant also denied having filed affidavit in the Court regarding this case and this is the extent of lie. He denied the fact that loan of ₹1 lac was paid by his wife to Surinder Kaur wife of the accused, after consulting him and his son Harcharan Singh or that Surinder Kaur had given Power of Attorney in respect of her house in favour of Paramjit Kaur or that they had given two blank cheques to her issued by the accused for security. Later on,

the complainant stated that Surinder Kaur might have given General Power of Attorney on 26.05.2004 to his wife Paramjit Kaur in respect of her house but he does not know.

Learned lower Appellate Court, from the cross-examination of the complainant, found that statement of complainant is not believable. The complainant could not admit or deny, if Surinder Kaur had got cancelled General Power of Attorney dated 26.05.2004 on 31.05.2004 or that after cancellation of General Power of Attorney, Surinder Kaur had asked Paramjit Kaur to return her sale deed or the General Power of Attorney or blank cheques of accused or that instead of returning the documents, Paramjit Kaur got registered a sale deed dated 31.05.2004 in favour of her son Harcharan Singh.

At the time of arguments, all these facts have been admitted by learned counsel for the applicant i.e. execution of General Power of Attorney in favour of the complainant, cancellation of General Power of Attorney, execution of sale deed by Paramjit Kaur in favour of Harcharan Singh and the civil suit challenging the above sale deed filed by Surinder Kaur.

Otherwise also, I find that no date has been mentioned as to when the loan was given. It was written only that in May 2004, the loan was given. There is no document on record to show the loan transaction. The defence raised by the accused is supported by the evidence on record i.e. cross-examination of the complainant and the same is probable one. Learned lower Appellate Court has rightly acquitted the accused. The presumption under Section 139 of the Negotiable Instruments Act has been

duly rebutted by the accused.

In view of discussion, I find that the impugned judgment dated 15.10.2011 passed by learned Addl. Sessions Judge, Jalandhar, 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.

As the leave to appeal is not granted, consequently, CRA No.S-135-SB of 2012 also stands dismissed.

October 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No