

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

CRM No.A-1109-MA of 2010 (O&M)

Date of decision: October 21, 2016

Rajinder Singh

...Applicant

Versus

Giani Inderjit Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ramneek Vasudeva, Advocate
for the applicant.

Mr.Arun Singla, Advocate
for respondent No.1.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Applicant-Rajinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Giani Inderjit Singh and State of Punjab, challenging the impugned judgment dated 01.09.2010 passed by learned Sessions Judge, Rupnagar, whereby the appeal filed by the accused-respondent against the judgment of conviction and order of sentence dated 23.12.2009 passed by learned Judicial Magistrate Ist Class, Ropar, was allowed and they were acquitted.

It is mainly stated in the application that accompanying appeal

further stated that learned Sessions Judge while acquitting the accused has acted contrary to law. The evidence on the record has not been appreciated at all. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Rajinder Singh filed a complaint against accused Giani Inderjit Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused was having friendly relations with the complainant, on account of which, in the month of November 2007, the accused approached the complainant and requested to borrow an amount of ₹4 lacs. Accordingly, the complainant paid the said amount to the complainant and accused promised to return the same within two months or as and when demanded by the complainant. Thereafter, in the month of December 2007, when the complainant requested the accused to return the money, then the accused in discharge of his liability issued a cheque bearing No.952579 dated 02.01.2008 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.

From the record, I find that the accused in the statement under Section 313 Cr.P.C., denied all the allegations and pleaded false implication. He further stated that he has not taken any loan from the complainant. The son of the complainant entered into an agreement with the accused and at that time, the complainant had given a cheque to the accused which was later on encashed by the accused. Thereafter, a dispute arose between them with regard to which, a civil suit was filed by son of the

further stated that he entrusted the cheque in question by way of security. The complainant and his son have also obtained signatures of the accused on some blank documents and cheques. It is also case of the accused that he returned the whole amount to the son of the complainant. The present case has been filed by the complainant in connivance with his son.

Learned JMIC, Ropar, after appreciating the evidence, convicted and sentenced accused Giani Inderjit Singh 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 ₹5000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month. An appeal was filed by accused-respondent and learned Sessions Judge, Rupnagar, accepted the appeal and acquitted the accused-respondent vide impugned judgment dated 01.09.2010.

Aggrieved from impugned judgment dated 01.09.2010, present application seeking leave to appeal has been filed by the complainant-applicant.

Notice of motion was issued and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the application.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the judgment passed by learned Sessions Judge, Rupnagar 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 Sessions Judge, Rupnagar can be held as perverse

properly and has given wrong findings.

It is settled law that the accused is to raise probable defence to rebut the presumption under Section 139 of the Negotiable Instruments Act. In the present case, the accused has rebutted the presumption by raising probable defence. It is admitted that at the time of arguments that a civil suit was filed by the son of the complainant regarding agreement to sell and in that suit, a compromise had taken place. It is also admitted at the time of arguments by learned counsel for the applicant that the complainant gave the cheque to the accused earlier, which was got encashed by the accused.

Furthermore, there is no document on record of any type to show the loan transaction. Otherwise also, it looks improbable that if the proceedings regarding agreement to sell are already going on, then why the complainant would lend huge amount of ₹4 lacs to the accused without taking any security or without getting executed any document. Learned Sessions Judge, Rupnagar, discussed the evidence in minute detail and gave the findings as per evidence and law.

Learned Sessions Judge, Rupnagar, held that PW-1 Rajinder Singh admitted in his cross-examination dated 18.09.2008 that he paid the amount to the accused in connection with purchase of 32 marlas of land from the accused. He further deposed in cross-examination that he entered into an agreement for purchase of 32 marlas of land. If this amount of ₹4 lacs was paid concerning transaction of purchase of 32 marlas of land, then the liability of the appellant (accused) to return back the amount of sale consideration does not arise. If that be the position, then question of issue of cheque by appellant (accused) in favour of the respondent (present

applicant) does not arise.

Lower Appellate Court further held that this shatters the credibility of the case of respondent (applicant) qua issue of cheque in question in discharge of the liability. PW-1 further admitted in the cross-examination that the agreement was executed in January 2007 and it is held by learned Sessions Judge, Rupnagar that as such, these versions of the complainant Rajinder Singh are enough to establish as if amount of ₹4 lacs was paid by respondent (applicant) to appellant (accused) as part of the sale consideration of sale of 32 marlas of land.

As per the evidence, when the sale deed was to be got registered by the accused on 03.01.2008, then why he will issue the cheque on 02.01.2008 i.e. one day earlier before the execution of the sale deed. Otherwise also, it looks improbable that when agreement to sell has been executed between the son of the complainant and the accused and the sale deed was to be executed on 03.01.2008 and ₹4 lacs was paid as earnest money on 08.01.2007 at the time of agreement to sell, then why the complainant would give ₹4 lacs more to accused in November 2007. As per the evidence, ₹4 lacs was paid as earnest money and ₹1 lac more was paid in June 2007 and only ₹ 1 lac remained to be paid, then why the complainant paid ₹4 lacs in November 2007 and if in November 2007, ₹4 lacs was paid, then why he did not get executed the sale deed from the accused by paying ₹1 lac.

In view of all these facts, I find that findings given by learned Sessions Judge, Rupnagar that defence of the accused is probable one and presumption under Section 139 of the Negotiable Instruments Act is rebutted, are correct, as per evidence and law. There is nothing on the

has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the lower Appellate Court. The impugned judgment dated 01.09.2010 passed by learned Sessions Judge, Rupnagar, 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.

October 21, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No