

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

CRM No.A-664-MA of 2012 (O&M)

Date of decision: May 23, 2016

Inder Singh

...Applicant

Versus

Amar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Gurvir Kaur, Advocate
for the applicant.

Mr.Sanjiv Kumar Arora, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Inder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Amar Singh, challenging the impugned judgment dated 14.05.2012 passed by learned Addl. Sessions Judge, Ferozepur, vide which the appeal filed by the respondent against the judgment of conviction and order of sentence dated 23.02.2011 passed by learned Judicial Magistrate Ist Class, Ferozepur, was allowed and judgment of conviction and order of sentence was set aside and 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 also stated that a strong prima facie case is made out for the grant of special leave

to appeal. It is, therefore, prayed that leave to appeal be granted.

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.

As per the record, the complainant Inder Singh filed a complaint against Amar Singh under Sections 138 of the Negotiable Instruments Act. As per complainant's version, accused was to pay ₹4 lacs to him as old debt and on demand, accused issued a cheque bearing No.142362 dated 23.06.2005 for an amount of ₹4 lacs in favour of the complainant, which on presentation for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed well within time.

The complainant examined himself as CW-1 and closed the evidence. The accused in the statement under Section 313 Cr.P.C. took the plea that complainant is running a commission agency in the name and style of M/s Bhagat and Company, near Vegetable Market, Ferozepur City and he is running the business in the name of his wife Harjinder Kaur, who is Proprietor of the firm and he had been selling paddy and wheat through the said agency. He sold wheat and paddy worth ₹1,57,153/- on 3.12.2003 complainant took a loan of ₹2 lacs for depositing with the firm and issued a chit as a token of receipt. He has further taken the plea that he and his wife got insurance policy through complainant and on maturity of the policy, a cheque for ₹48000/- was issued by Insurance Company in his favour and he approached the complainant for encashment of the cheque and complainant got opened saving bank account in his name in State Bank of Patiala,

Ferozepur City and complainant signed the application for opening the account as his identifier. The accused further stated that on opening the account, complainant got deposited the cheque of ₹48000/- which was issued by Insurance Company in his favour. The complainant got signed two cheques from him and kept the cheque book and two signed cheques with him. The complainant got encashed one cheque by filling amount of ₹47000/- in the cheque and kept the amount. It is also stated that complainant cheated him taking undue advantage of his innocence and illiteracy. The accused examined DW-1 Vinod Kumar and DW-2 Naranjan Singh.

Learned JMIC, Ferozepur, after appreciating the evidence, convicted the accused-respondent under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay fine of ₹10,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

Aggrieved from the above judgment of conviction and order of sentence, the accused-respondent Amar Singh filed the appeal before Sessions Court and learned Addl. Sessions Judge, Ferozepur, vide judgment dated 14.05.2012, accepted the appeal and acquitted the accused.

Aggrieved from the above-said judgment of acquittal, present application for grant of leave to appeal has been filed by the applicant-complainant.

I have gone through the judgment passed by learned Addl. Sessions Judge, Ferozepur. From the perusal of the judgment passed by learned Addl. Sessions Judge, Ferozepur, I find that the findings have been given as per evidence and law. In no way, the findings given by learned

Addl. Sessions can be held as perverse. Nothing has been pointed out as to which material evidence has not been considered or which material evidence has been misread by learned Addl. Sessions Judge, Ferozepur.

From the record, I find that the perusal of the complaint itself shows that no particulars have been given regarding the liability of the accused. It is simply written that it is an old debt. There is no mention as to on which date, in which month and year the loan was given or whether it was given in lumpsum or paid in separate transactions. No particulars of any type have been mentioned. It is simply written that accused was to pay ₹4 lacs to complainant. No document has been placed on the record by the complainant to show any loan transaction. The wife of the complainant is stated to be running a commission agent shop and accused stated that he was selling the crop with the commission agent. The accused has raised above-stated specific defence to rebut the presumption. DW-1 Vinod Kumar, who has brought the summoned record i.e. saving account is in the name of Amar Singh and his wife Kulwant Kaur and proved the copy of account opening form Ex.RWI/A and they were identified by Harinder Singh and also proved the account opening form, ExDW1/B. The father's name of Harjinder Singh is written as Ramnath and at the time of opening the account two cheques amounting to ₹23705/- each totaling ₹47410/- were deposited in the account and certified copy of the same is Ex.DW1/C and Inder Singh has withdrawn ₹47000/- from the account through a cheque which is in his name and proved the copy of the same Ex.DW1/D and also proved the copy of statement of account Ex.DW1/E. This statement of DW-1 Vinod Kumar supports the version that complainant has withdrawn ₹47,000/- from account of the accused. There is no mention in the complaint as to whether this amount has

been withdrawn and whether this amount has been adjusted in the loan transaction, if any, with the accused.

DW2 is Naranjan Singh, who tendered into evidence his duly sworn affidavit Ex.DW2/A to the effect that he personally knew Harjinder Singh son of Ram Nath and Harjinder Kaur wife of Inder Singh. Harjinder Kaur wife of Inder Singh is sister of Harjinder Singh, which means that Inder Singh, Harjinder Kaur and Harjinder Singh are closely related to each other. This fact also supports the defence version raised by the accused.

Rachpal Singh, Ahlmad has brought the summoned record of file titled as 'Amar Singh vs. M/s Bhagat Commission Agent' and proved the certified copy of writing Ex.D1 and original legal notice dated 07.03.2006 addressed to M/s Bhagat and Company, which was issued by Amar Singh and also proved the certified copy of the same as Ex.D2. This also supports and corroborates the defence version.

Keeping in view the above facts and circumstances, I find that no account books of any type have been produced on the record. No income tax return has been produced on the record to show the present loan transaction. Nothing is on the record to show the loan transaction. The accused has raised probable defence which is duly supported by the DWs.

In view of the above discussion, I find that the defence raised by the accused is probable and he has rebutted the presumption under Section 139 of the Negotiable Instruments Act. Respondent Amar Singh has been rightly acquitted by appreciating the evidence in right perspective. The findings given by learned Addl. Sessions Judge, Ferozepur in the impugned judgment dated 14.05.2012 are correct, as per law and do not require any interference from this Court. The judgment passed by learned JMIC,

Ferozepur has been rightly set-aside not being 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.

May 23, 2016
Vgulati

(INDERJIT SINGH)
JUDGE