

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

CRM No.A-1003-MA of 2013 (O&M)

Date of decision: September 24, 2016

Zulfi Ram

...Applicant

Versus

Satnam Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Monika Sharma, Advocate for
Mr.Sunil K. Sahore, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.47693 of 2013

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 360 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-1003-MA of 2013

Applicant-Zulfi Ram has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Satnam Singh, challenging the impugned judgment dated 19.09.2012 passed by learned Judicial Magistrate Ist Class, Anandpur Sahib, vide which the 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

further stated that learned trial Court while passing the impugned judgment, has gravely erred in law in overlooking the basic provisions of Section 138 to 142 of the Negotiable Instruments Act. Learned trial Court has erred in law drawing the presumption in favour of the complainant/holder in due course as provided under Section 139 of the Negotiable Instruments Act. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Zulfi Ram filed a complaint against accused Satnam Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, the accused had to pay a sum of ₹50,000/- to him taken by him for business purpose. In order to discharge his liability, the accused issued a cheque bearing No.879771 dated 27.10.2007 for a sum of ₹50,000/-, which on presentation before the bank for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

After the complainant's evidence, the statement of accused Satnam Singh was recorded, who pleaded that the work of salt handling was allowed in his name and the complainant became partner in the firm for the above-said work. The complainant along with other partners obtained cheque as a security from him and when the complainant came to know that the firm is going in loss, then he presented the cheque in the bank and got dishonoured the same. He further pleaded that the cheque was not given to the complainant for discharge of any liability.

Learned JMIC, Anandpur Sahib, after appreciating the evidence, acquitted the accused-respondent.

I have heard learned counsel for the applicant and have gone

through the record.

From the perusal of the record, especially the impugned judgment, I find that the findings given by learned JMIC, Anandpur Sahib, are correct, as per evidence and law. In no way, the findings can be held as perverse. At the time of arguments, 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. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

The complainant, firstly, has not given any date, month and year to show when he advanced ₹50,000/- to the accused. No other particulars have been given. No receipt or any security document was taken at the time of advancing the loan. There is no document on record to show the loan transaction in question. The complainant while appearing into the witness box, in cross-examination has admitted that he had given payment of cheque to the accused after entering into partnership with the accused in the business of salt. He also admitted that as per terms of partnership, every partner was responsible for the profit and loss of business as per his share. He also stated that he had presented the cheque after dissolution of partnership. He also admitted that the cheque was obtained by him from the accused as security. Learned Magistrate held that this part of the cross-examination of the complainant, falsifies his entire story set up in his complaint and it has proved on record the plea set up by the accused that the cheque in question was given to the complainant as security in the partnership firm for increase of business.

Therefore, I find that the presumption under Section 139 of the

Negotiable Instruments Act has been duly rebutted by the accused from the cross-examination of the complainant itself.

In view of the above discussion, I find that the impugned judgment dated 19.09.2012 passed by learned JMIC, Anandpur Sahib, 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.

September 24, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No