

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

**CRM No.A-403-MA of 2013(O&M)**  
**Date of decision: January 25, 2016**

Sachin Kumar

...Applicant

Versus

M/s Ram Ditta Mal Samay Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Pritam Saini, Advocate  
for the applicant.

Mr.Harsh Goyal, Advocate for  
Mr.Surender Deswal, Advocate  
for the respondent.

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**INDERJIT SINGH, J.**

Applicant-Sachin Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent M/s Ram Ditta Mal Samay Singh, challenging the judgment dated 29.08.2011 passed by learned Special Judicial Magistrate, Kurukshetra, whereby accused-respondent was acquitted of the charges.

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 Magistrate has wrongly and illegally acquitted the respondent on flimsy grounds whereas the applicant has duly proved that cheque was issued by the respondent. It is, therefore, prayed

that leave to file the appeal be granted.

Notice of motion was issued and learned counsel for the respondent appeared and contested the application.

As per the record, the complainant Sachin Kumar filed a complaint against accused M/s Ram Ditta Mal Samay Singh under Sections 138/142 of the Negotiable Instruments Act, 1881. As per complainant's version, the accused received an advance amount to ₹1,79,620/- from the complainant as both had good relations and having business dealings. Accused had to return the said amount, so he issued a cheque bearing No.0670130 dated 31.03.2007 for ₹1,79,620/-, which on presentation for encashment, was dishonoured with the remarks 'account closed'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

Learned Special Judicial Magistrate, Kurukshetra, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 29.08.2011.

After hearing learned counsel for the parties and after going through the record, I find that nothing has been argued as to how the findings given by learned Court below are perverse or against the law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below. In the complaint, legal notice as well as in the chief-examination, the complainant has stated that the accused issued cheque on 31.03.2007 for ₹1,79,620/- but while

appearing as witness he stated in cross-examination that it is post-dated cheque. The loan was given to the firm and M/s Ramditta Mal Samay Singh has been sued through Vijay Pal Singh. There is nothing that it is a partnership firm or sole proprietorship firm. No partner has been implicated as accused. If the loan was given to the firm, then some security document should have been got executed by the complainant at the time of advancing the loan, especially when the complainant says that he had business relations with the accused. No document of any type including the account books has been produced to show that this loan was given to the accused. There is no entry on record nor any income tax return has been produced to prove the transaction regarding the loan.

Learned Magistrate, after discussing the law, also held that no month, date etc. has been mentioned in the complaint as to when the loan was given. There is no evidence regarding financial capacity of the complainant to show payment of this amount to the accused. Even if it is taken that it was a loan, then it looks unnatural that complainant gives a loan of ₹1,79,620/-, which may be like ₹1,80,000/- but not like this. No person will borrow the amount like this. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted from the record by the accused by raising probable defence.

In view of the above discussion, I find that findings given by learned Special Judicia Magistrate, Kurukshetra, in no way, can be held as perverse. The impugned judgment dated 29.08.2011 passed

by learned Special Judicial Magistrate, Kurukshetra, is correct, as per law and evidence and does not require any interference from this Court.

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.

**January 25, 2016**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**