

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

CRM No.A-616-MA of 2013 (O&M)

Date of decision: October 22, 2016

Prem Chand

...Applicant

Versus

Rakesh Wadhwa

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sudhir Aggarwal, Advocate
for the applicant.

Mr.R.K.Saini, Advocate
for the respondent.

INDERJIT SINGH, J.

CRM No.37376 of 2013

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 183 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-616-MA of 2013

Applicant-Prem Chand has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Rakesh Wadhwa, challenging the impugned judgment dated 15.11.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the accused-respondent was acquitted.

is being filed which is likely to succeed on the grounds taken therein. It is further stated that documentary evidence clearly shows that an offence under Section 138 of the Negotiable Instruments Act has clearly been made out as the respondent failed to discharge his liability. It is, therefore, prayed that leave to appeal be granted.

Notice of motion.

Mr.R.K.Saini, Advocate, who had already been appearing on behalf of respondent qua notice regarding application for condonation of delay, accepts notice on behalf of respondent and contests the application.

As per the record, the complainant Prem Chand filed a complaint against accused Rakesh Wadhwa under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused approached him and requested for some loan. Keeping in view the good family relations, the complainant gave a loan of ₹9 lacs in the month of January 2009. The accused in order to discharge his legal liability, issued cheque No.068327 dated 05.05.2009 for a sum of ₹9 lacs in favour of the complainant, 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.

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

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

From the perusal of the record, especially the impugned judgment, I find that the findings have been given by learned JMIC,

Gurgaon, while appreciating the evidence in right perspective. 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.

Though, it is stated that ₹9 lacs were given in the month of January 2009 but no date has been mentioned nor any other particulars have been given to show the capacity of the complainant to lend the amount nor there is anything that in whose presence such a huge amount was given. There is also nothing to show that from where the complainant brought the amount i.e. by withdrawing from the bank etc. No document of any type has been got executed from the accused. No document has been produced by the complainant before the trial Court to show the transaction. Otherwise also, it look improbable that when there is no document of any type with the complainant, the accused will give the cheque on 05.05.2009 for a sum of ₹9 lacs and then will go to the Bank within three days to get close the account. If the accused has any malafide intention, not to pay the amount, why he will give the cheque when the complainant has no document of any type with him to enforce this liability against the accused.

Secondly, the version of the accused is probable. The accused was tenant in the premises of the complainant, which fact has not been disputed. The accused had vacated the premises of the complainant in April 2009. The accused took the defence that the cheque book of his joint account with his wife has been misplaced. The complainant has misused the

the complainant has given the cheques to his relatives and close friends.

It is also the defence that complainant has also filed similar complaints against the wife of the accused. The complainant has given one cheque to Om Parkash, his relative. The Court also considered this fact. The legal notice has been given by Sh.S.K.Madan, Advocate, Hisar regarding cheque No.068326. The cheque number in the present case is 068327 and the cheque number in another complaint is 068325, which means that these cheques are qua same series. The accused has also proved DDR entry No.5 dated 17.06.2009 lodged in Police Post Arjun Nagar, Gurgaon, regarding the misplacement of the cheque book.

The defence of the accused is probable and in view of the probable defence version, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. Learned trial Court has appreciated the evidence in right perspective.

In view of the above discussion, I find that the impugned judgment dated 15.11.2012 passed by learned JMIC, Gurgaon, 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 22, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No