

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

CRM No.A-119-MA of 2015(O&M)
Date of decision: July 26, 2016

Sumer Singh

...Applicant

Versus

Bhupender Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sumit Gupta, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sumer Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhupender Singh challenging the impugned judgment dated 17.12.2014 passed by learned Judicial Magistrate Ist Class, Karnal, whereby 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 the impugned judgment passed by learned JMIC, Karnal suffers from illegality and irregularity and deserved to be set aside. It is, therefore, prayed that leave to appeal be granted.

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

As per the record, the complainant Sumer Singh filed a complaint against accused Bhupender Singh under Section 138/142 of the Negotiable Instruments Act. As per the complainant's version, accused

approached the complainant to borrow an amount of ₹1,50,000/- to meet his

personal needs and promised to return the entire amount within a period of one year. The accused in discharge of his liability, issued cheque bearing No.664948 dated 21.03.2012 for ₹1,50,000/- 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 within time.

Learned Judicial Magistrate, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 17.12.2014.

From the record, especially the judgment passed by learned JMJC, Karnal, I find that the findings given by learned lower Court are correct, as per evidence and law. The evidence has been appreciated in right perspective. 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 given by learned lower Court are perverse or against the law. Nothing has been pointed as to what illegality has been committed by learned Court below while acquitting the accused.

The perusal of the findings given by learned Magistrate shows that while appearing as witness, the complainant could not depose about the date, month and year of lending the amount to the accused. There is no document on record to prove the loan transaction. Further, no security document was taken by the complainant at the time of advancing the loan. The Court below further held that on perusal of the cross-examination of the complainant, the Court finds no reason to believe that complainant and

given in the complaint and in the statement, are also contradictory. In the complaint, it is stated that accused issued the cheque in question after one year of borrowing the money whereas in the cross-examination, the complainant deposed that accused handed over the cheque in question to him on the same day he lent money to the accused. The cheque is dated 21.03.2012 but nothing has been mentioned in the complaint that it was a post dated cheque given to complainant or the loan was given on 21.03.2012. The accused has taken the defence that he used to trade in the company namely SVD Crown Trading Co., wherein the complainant invested an amount of ₹1,50,000/- under his I.D. The complainant in the cross-examination stated that possibility of said money being invested under ID of the accused could not be ruled out, meaning thereby, there is admission on the part of the complainant that the amount in question could have been invested by him in SVD Crown Trading co. under the ID of the accused. The version given by the accused is probable and the Court below found the version of the complainant to be false.

Keeping in view the above discussion, I find that impugned judgment dated 17.12.2014 passed by learned JMIC, Karnal, 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.

July 26, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No