

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1264-MA of 2015 (O&M)
Date of decision: April 23, 2016

The Nationalized Bank Employees through Sh.Kuldip Kumar its President

...Applicant

Versus

Hardev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sandhu, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-The Nationalized Bank Employees through Sh.Kuldip Kumar its President has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Hardev Singh, challenging the impugned judgment dated 07.03.2015 passed by learned Judicial Magistrate Ist Class, Ambala, 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 also stated that impugned order passed by learned JMJC, Ambala, whereby accused respondent has been ordered to be acquitted of the charges levelled against him, is totally illegal, perverse and erroneous. 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 The Nationalized Bank Employees through Sh.Kuldip Kumar its President filed a complaint against accused Hardev Singh under Section 138 of The Negotiable Instruments Act. As per complainant's version, accused is member of the complainant and has been availing the fiscal facilities of taking loan from it. In the month of November 2010, an amount of ₹1,05,175/- was outstanding against the accused. The complainant requested to the accused many times for making payment and he issued cheque No.334382 dated 02.12.2010 amounting to ₹1,05,175/-, which on presentation for encashment, was returned back unpaid with the remarks 'Insufficient funds'. Again the cheque was presented but it was returned unpaid with the remarks 'account closed'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Naraingarh, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 07.03.2015.

I have gone through the judgment dated 07.03.2015 passed by learned JMIC, Naraingarh. I find that that the findings given by learned Magistrate are correct, as per evidence and law. In no way, the findings can be held as perverse i.e. against the evidence and 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.

Learned Magistrate has discussed the evidence on record, especially the cross-examination of the complainant. The complainant in cross-examination admitted that the alleged cheque was issued as security cheque (blank) at the time of getting membership of the Society. Learned Magistrate further discussed that the loan was granted afterwards, after becoming the member. So, when the cheque was issued, at that time, there was no existing liability and it was simply a security cheque (blank). Learned JMIC, Naraingah, has also discussed that on the cheque Ex.C2, there is cutting on the account number with black ink and another account number was filled by the accountant of the society, which was admitted by the complainant in his cross-examination. The Society has not produced any record regarding the alleged loan taken by the accused. The only document which is attached as Ex.C7, does not reflect that the accused had taken the loan of amount of ₹1,05,175/-. Otherwise also, when the complainant admits that the cheque was given at the time of becoming the member of the Society as security cheque, then the version in the complaint that on the asking of the complainant to pay the loan amount, the cheque in question was issued, also becomes false.

In view of the above discussion, I find that the findings have been given by learned JMIC, Naraingarh, while appreciating the evidence in right perspective. The impugned judgment dated

07.03.2015 passed by learned JMIC, Naraingarh, 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.

April 23, 2016
Vgulati

(INDERJIT SINGH)
JUDGE