

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

CRM No.A-127-MA of 2015 (O&M)

Date of decision: September 15, 2016

Romesh Lal

...Applicant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Narinder S. Lucky, Advocate
for the applicant.

Mr.Neeraj Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Bhisham Kumar, Advocate for
Mr.Vikas Bali, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Applicant-Romesh Lal has filed this application under Section 378 Cr.P.C. seeking permission for leave to appeal against respondents State of Punjab and Nirmal Chand, challenging the impugned judgment dated 11.09.2014 passed by learned Addl. Sessions Judge, Ludhiana, whereby the appeal filed by the accused-respondent against the judgment of conviction and order of sentence dated 07.04.2011 passed by learned Judicial Magistrate Ist Class, Ganaur, was allowed and he 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,

therefore, prayed that leave to appeal be granted.

As per the record, the complainant Romesh Lal filed a complaint against accused Nirmal Chand under Section 138 of the Negotiable Instruments Act. As per complainant's version, the accused took a friendly loan of ₹3,35,000/- for running Nirmal Watch Company and Gift Centre so as to enhance the business of the firm and in discharge of legally enforceable liability, the accused issued two cheques bearing No.144781 dated 23.07.2007 for ₹1 lac and bearing No.144784 dated 30.07,2007 for ₹2,35,000/-, which on presentation before the bank for encashment, were returned back unpaid with the remarks 'Opening balance insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Ludhiana, after appreciating the evidence, convicted accused Nirmal Chand under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay fine of ₹5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months. An appeal was filed by accused-respondent and learned Addl. Sessions Judge, Ludhiana, accepted the appeal and acquitted the accused-respondent vide impugned judgment dated 11.09.2014.

Aggrieved from impugned judgment dated 11.09.2014, present application seeking leave to appeal has been filed by the complainant-applicant.

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 Addl. Sessions Judge, Ludhiana, are correct, as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the lower Appellate Court. Nothing has been pointed out as to how the findings given by learned Addl. Sessions Judge, Ludhiana, are perverse or against the law.

The perusal of the record shows that complainant has not given any date, month or year as to when the loan was advanced. No particulars of any type i.e. at which place, in whose presence the loan was given, whether it was given in cash or by way of cheque etc. There is also nothing whether the amount was given on interest or without interest. Similarly, no document was obtained by way of security i.e. pronote, receipt, agreement etc. Further, there is no documentary evidence on record to show the loan transaction. No document of any type including the income tax return has been produced to show the loan transaction.

On other hand, the accused has taken the defence that these two cheques were given as security when Parminder Singh took the loan from the complainant of ₹20,000/- and ₹25,000/-. DW-2 H.L.Janjua, SBP, produced the summoned record i.e. cheque issue register Ex.DA and as per said register, the cheque book containing cheques No.144781 to 144800 were issued to accused on 14.10.2005. He has also produced the copy of statement of account of accused Nirmal Chand, according to which, the cheque No.144785 amounting to ₹45,000/- was encashed on 21.04.2006 and thereafter, no other cheque was entered in this account.

was encashed on 21.04.2006, then how the cheques bearing No.144781 and 144784 were issued on 23.07.2007 and 30.07.2007 respectively i.e. after cheque bearing No.144785. From the record, it looks doubtful that cheque bearing No.144785 was issued earlier and other cheques in question, which were of earlier series of number, were issued later on after 1 year and 3 months.

Furthermore, the complainant admitted in his cross-examination that he received ₹45,000/- vide cheque No.144785 from the account of accused on 21.04.2006. There is no explanation whether this amount has been shown or adjusted by the complainant. Learned counsel for the applicant-complainant argued that this amount has been given for some other transaction but there is no such pleading by the complainant. The admission of the complainant corroborates the version of the accused that the loan to Parminder Singh has been given at the assurance of the accused. The accused used to take 1% as commission and used to hand over the cheques to the complainant for such type of transaction.

The defence raised by the accused is supported by defence evidence as well as the admission of the complainant, therefore, the presumption under Section 139 of the Negotiable Instruments has been duly rebutted.

The perusal of the judgment passed by learned Addl. Sessions Judge, Ludhiana, shows that the findings have been given by correctly appreciating the evidence in right perspective.

In view of the above discussion, I find that the impugned judgment dated 11.09.2014 passed by learned Addl. Sessions Judge,

interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

September 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No