

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

CRM No.A-1358-MA of 2015 (O&M)

Date of decision: August 09, 2016

Jagdish Singh

...Applicant

Versus

Satpal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Dhawan, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Jagdish Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Satpal, challenging the impugned judgment dated 20.05.2015 passed by learned Judicial Magistrate Ist Class, Chandigarh, vide which 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 that accused has been acquitted erroneously without having any cogent evidence on record in favour of the accused. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Jagdish Singh filed a complaint against accused Satpal under Section 138 of the Negotiable

₹20,000/- to the accused on 15.06.2012 and in consideration of the loan amount, accused issued post dated cheque bearing No.880761 dated 10.03.2013 in favour of complainant, which on presentation for encashment, was returned back unpaid with the remarks 'Account not traceable'. Legal notice was issued. When the payment was not made, then the complaint was filed within time.

The accused took the plea that he had taken loan from the Angel Society in the year 2002 in lieu of that he had made the payments and the receipts etc. are annexed in the file as Ex.D2 to Ex.D39. He further stated that he had given the security cheque, which complainant, being a secretary of the society has misused. He has not taken the loan in 2012 and RD Ex.D33 & Ex.D34 have not been repaid to him and this amount is also lying with complainant.

At the time of evidence, Jagdish Singh complainant in cross-examination, admitted that he has a money lending license, copy of which is Ex.D1. He deposed that he did not obtain security cheques at the time of advancing the loan. He deposed that he is working under the name and style of M/s Easy Solutions being proprietor of the firm. He deposed that he worked as Secretary in Angel Mutual Welfare Society. He further deposed that society has advanced loan to the accused in the year 2000, 2001 and 2004. He admitted that he has issued 28 receipts, which belongs to Angel Mutual Welfare Society of the previous three loans, documents of those loans are Ex.D2 to Ex.D29 and the loan form of the previous loans are Ex.D30 to Ex.D32 and the voucher regarding payment of RD are Ex.D33 and Ex.D34. He further deposed that society used to advance loans by

cheque.

Learned JMIC, Chandigarh, after appreciating the evidence on record acquitted the accused-respondent by holding that presumption under Section 139 of the Negotiable Instruments Act has been rebutted as defence raised by the accused is probable and supported and corroborated by cross-examination of the complainant and also from the defence evidence. It is admitted by the complainant that accused has taken loan from Angel Mutual Welfare Society in 2000, 2001 and 2004. He also admitted that he was Secretary in that Society. He further admitted that Angel Mutual Welfare Society was advancing loan to various persons. He also admitted that he had given receipts to the accused regarding payment of that loan amount.

The version of the complainant in the present case that he advanced loan of ₹20,000/- to the accused is not supported and corroborated by any documentary evidence. Otherwise also, the applicant-complainant is having money lending licence and is working under the name and style of M/s Easy Solutions. It looks improbable that he would not take any security document or will not get executed loan application etc. No record of M/s Easy Solutions has been produced to show this loan transaction. It looks improbable that why the loan was not given by M/s Easy Solutions and why it was given by the complainant in personal capacity.

The perusal of the findings given by learned Magistrate shows that these are correct, as per law and have been given while appreciating the evidence on record in right perspective. 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 Court below. The impugned judgment dated 20.05.2015 passed by

learned JMIC, Chandigarh, 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.

August 09, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No