

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1363-MA of 2015(O&M)
Date of decision: January 15, 2016

Sukhdev Singh

...Applicant

Versus

Sarwan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Peeush Gagneja, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sukhdev Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sarwan Singh, challenging the judgment dated 29.05.2015 passed by learned Judicial Magistrate Ist Class, Abohar, whereby accused-respondent was acquitted of the charges.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that the impugned order has resulted into miscarriage of justice. It is, therefore, prayed that leave to file the appeal be granted.

As per the record, the complainant Sukhdev Singh filed a complaint against accused Sarwan Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, in order to discharge legal liability towards the complainant, the accused issued a

cheque bearing No.000016 dated 04.07.2014 for ₹1,50,000/- drawn at Bank of India, in favour of the complainant with the assurance that the said cheque will be encashed as and when presented. When the said cheque was presented for encashment, it was dishonoured on 22.08.2014 on the ground of 'funds insufficient'. Legal notice was served upon the accused. When the payment was not made within the prescribed time, then the complaint was filed.

In defence, the accused tendered into evidence legal notice dated 21.05.2013 Ex.D5, photocopy of complaint under Section 138 of the Negotiable Instruments Act titled as 'Sukhdev Singh vs. Jaswinder Singh' as Mark D1.

Learned JMJC, Abohar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 29.05.2015.

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

From the perusal of the record, firstly I find that in the complaint, what is the existing liability has not been explained. There is nothing as to whether any loan was given, if given, then on which date, in which month and year it was given. No particulars have been mentioned in whose presence the amount was given, where and for what purpose it was given. There is also nothing as to when the loan amount was demanded. There is no documentary evidence on record to prove the existing liability. The complainant in the cross-examination has stated that accused is not his relative and he came

to know about the accused in the year 2014 as the accused used to visit the Court oftenly. The complainant is an Advocate. There is nothing on the record as to why the complainant, who is practising as Advocate at the Court complex at Abohar, had given the amount without getting any security document. When the complainant appeared in the witness box, he stated during cross-examination that he advanced the loan in the month of June 2014. The cheque is dated 04.07.2014. The Court held the version of the complainant fully doubtful. There is no close relation of the complainant with the accused. The accused is simply, as stated by the complainant, visiting the Court complex and the complainant gave loan of ₹1,50,000/- without executing any security document. Even, it is stated by the complainant that he came to know the accused in the year 2014. Firstly, neither there being any such relationship nor being relative nor any friendly relations of the complainant, as to why such a huge amount has been given. Secondly, no document has been placed on record to show the transaction.

On the other hand, the accused pleaded that he applied loan from FCCB bank through the complainant advocate and at that time, the complainant obtained present blank signed cheque as security. During cross-examination, the accused has tendered into evidence notice dated 21.05.2013 Ex.D1 and postal receipts as Ex.D2 to D4 and the complainant admitted all these documents. Earlier, the complainant denied the fact that he ever remained Advocate on behalf of the accused. The perusal of Ex.D1 shows that complainant himself

sent a legal notice on behalf of the accused being his Advocate.

Keeping in view the facts and circumstances of the present case and the reasonings given by learned JMIC, Abohar, I find that the presumption under Section 138 of the Negotiable Instruments Act has been duly rebutted and the accused has raised probable defence. In no way, the findings can be held as perverse or against the 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.

In view of the above discussion, I find that the finding given by learned JMIC, Abohar, are as per evidence. In no way, the findings can be held as perverse. The judgment dated 29.05.2015 passed by learned JMIC, Abohar, 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.

January 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE