

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

CRM No.A-1439-MA of 2015 (O&M)

Date of decision: July 29, 2016

Amarjit Singh

...Applicant

Versus

Satish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Panag, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Amarjit Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Satish Kumar, challenging the impugned judgment dated 01.07.2015 passed by learned Judicial Magistrate Ist Class, Amritsar, 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Amarjit Singh filed a complaint against accused Satish Kumar under Section 138 of the Negotiable Instruments Act. As per the complainant's version, accused Satish Kumar had received a sum of ₹8,20,000/- from complainant to send

Sukhpal Singh son of complainant abroad and accused has also obtained

passport of son of complainant but he failed to send the complainant's son to abroad. Thereupon, in lieu of debt/legal liability to repay the said amount, the accused issued cheque bearing No.958061 dated 15.03.2012 for a sum of ₹2,45,000/- in favour of complainant, which on presentation for encashment, was returned back unpaid with the remarks 'Payment stopped by Drawer'. Legal notice was issued. When the payment was not made, then the complaint were filed within time.

The accused denied the allegations in the statement under Section 313 Cr.P.C. and stated in defence that the cheque was issued by him as security to one Rajpal Joshi. The cheque was issued in the name of Amarjit Singh in presence of Rajpal. Rajpal assured him that when they will get tuition fee returned from college at that time they will return the cheque to the accused, which the accused has given as a security but before the encashment of the cheque, they filed a false complaint in the police station and the police enquired the matter and found that the cheque was a security cheque. In defence, accused also examined DW-1 Raman Taneja, who stated that accused is an immigration expert. He used to go to his office for advertisement orders for flex boards. He further stated on 10-11/11.2011 at about 1.00 P.M., he visited the office of accused Satish Kumar. At that time, complainant along with one Rajpal employee of telephone department was present in the office of the accused and they were discussing for the refund of tuition fee and deposed regarding the defence version. Accused examined himself as DW-2 and deposed as per defence version and also produced copy of police report dated 29.02.2012 qua enquiry made by Asstt. Commissioner of Police (North), Amritsar.

acquitted the accused-respondent vide judgment dated 01.07.2015.

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

At the time of arguments, 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 are perverse or against the evidence and what illegality has been committed by the Court below.

Learned JMIC, Amritsar held that no independent witness has been examined by the complainant to prove the allegation of giving of ₹8,20,000/- to the accused. No document of any type has been produced on the record. There is only oral statement of the complainant. The defence of the accused has been supported or corroborated by admission of the complainant during cross-examination where complainant stated that “...*It is correct that the present cheque was issued to Rajpal as security for refund of fee paid to college by Sukhpal Singh amounting to ₹2,45,000/-. It is correct that the cheque in question was issued to Rajpal who is my nearest friend.*” The Court below from the above admission held that cheque in question was not issued for liability and the cheque was not issued to complainant but to one Rajpal. The Court also found that son of complainant had paid college fee of 3500 pounds @ Rs.70 per pound, which comes to ₹2,45,000/-. The Court further held that accused was only providing the consultation to the son of the complainant for sending him abroad for studies. The son of complainant was to pay ₹20,000/- as consultation fee to the accused and it is not denied by the accused that the

fee was paid from the account of son of complainant.

Keeping in view the above discussion, I find that findings have been given after appreciating the evidence in right perspective. In no way, the findings can be held as perverse. The impugned judgment dated 01.07.2015 passed by learned JMIC, Amritsar, 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 29, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No