

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

CRM No.A-1470-MA of 2015(O&M)

Date of decision: July 13, 2016

Rattan Lal

...Applicant

Versus

Dalip Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Kumar Khunger, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Rattan Lal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Dalip Kumar challenging the impugned judgment dated 09.07.2015 passed by learned JMIC, Abohar, 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 further stated learned JMIC, Abohar, illegally and wrongly and without appreciating the evidence of the case file, acquitted the respondent and dismissed the complaint. 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 Rattan Lal filed a complaint

against accused Dalip Kumar under Section 138 of the Negotiable Instruments Act. As per the complainant's version, accused in order to discharge his legal liability issued a cheque bearing No.621627 dated 18.03.2014 for ₹40,000/- in favour of the complainant from his account No.14540, which on presentation for encashment, was returned back unpaid with the remarks 'Funds insufficient'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

Learned Magistrate, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 09.07.2015 and held that the cheque in question was not issued from the account of the accused but from the account of one Gurtej Singh and held that one of the necessary ingredient of Section 138 of the Negotiable Instruments Act, is missing. Learned Magistrate has also discussed the defence evidence

Learned counsel for the applicant, at the time of arguments admitted that the cheque in question was issued from the account of Gurtej Singh but he argued that the Bank in the return memo, has not written this fact and due to the negligence of the bank, the complainant should not suffer.

No benefit can be given in view of this arguments that bank has not mentioned this fact in the memo. For conviction of the accused, all the ingredients as prescribed under Section 138 of the Negotiable Instruments Act, are to be proved.

I have gone through the judgment passed by the Court below. I find that, the judgment passed by the Court below is correct and 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.

Keeping in view the fact that one of the essential ingredient under Section 138 of the NI Act is missing and further, no particulars of the loan transaction have been given and in view of the probable defence raised by the accused, I find that impugned judgment dated 09.07.2015 passed by learned JMIC, Abohar, is correct, as per law and evidence and does not require any interference from this Court.

Therefore, finding no ground for grant of leave to appeal, the present application stands dismissed.

July 13, 2016
Vgulati

(INDERJIT SINGH)
JUDGE