

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1475-MA of 2015 (O&M)

Date of decision: March 02, 2016

Sukhdev

...Applicant

Versus

Satish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ajay Sharma, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sukhdev 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 20.07.2015 passed by learned Judicial Magistrate Ist Class, Palwal, whereby the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. 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 Sukhdev filed a complaint against accused Satish Kumar under Section 138 of the Negotiable Instruments Act, 1881. As per complainant's version,

accused borrowed an amount of ₹2,16,000/- from the complainant for two months. The accused, in order to pay the said amount, issued cheque No.133470 dated 15.10.2013 amounting to ₹2,16,000/- in favour of the complainant, which on presentation for encashment, was returned back unpaid by the bank with the remarks 'insufficient funds'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within limitation.

Learned JMIC, Palwal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 20.07.2015.

I have gone through the judgment dated 20.07.2015 passed by learned JMIC, Palwal. The findings given by learned Magistrate, are correct as per evidence and law. There is nothing on the record to show that the findings given by learned Court below are 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.

The accused has admitted the borrowing of the loan and also admitted the issuance of the cheque for security purpose. The version of the accused is that he has already made the complete payment as per the receipt placed by him on the file bearing signatures of Sukhdev. The accused examined DW-1 Subash Sharma, Clerk of Bank of India, who brought the summoned record i.e. account opening form of Sukhdev, ration card etc. The accused also examined DW-2 Dr.Satya Dev Aggarwal, who has tendered his

affidavit Ex.DW2/A and has given his report Ex.DW2/B, vide which he opined that the questioned signatures marked as Q1 to Q3 and the admitted signatures marked A1 to A6 have been written by the same person. He further tendered photographs of signatures of Sukhdev, both questioned and admitted.

Learned Magistrate, after considering the defence evidence, found that the payment has already been made as per the receipts which were issued by the complainant but these facts have not been mentioned in the complaint regarding payment of amount by the accused to the complainant through these receipts.

Learned counsel for the applicant argued only on one point that these receipts were not produced before the Court. Rather, these have been given to handwriting expert only for comparison.

This argument has no merit. When the receipts were produced by the expert on the record including original one and also proved his report and expert has been duly cross-examined, then only way for the complainant, to rebut the evidence produced by the accused, is to get examined another expert but the complainant has not done anything. The accused has raised probable defence, which has been duly corroborated by the defence evidence. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

In view of the above discussion, I find that the findings given by learned JMJC, Palwal, in no way, can be held as perverse.

The findings have been given after appreciating the evidence in right

perspective. The impugned judgment dated 20.07.2015 passed by learned JMIC, Palwal, 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.

March 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE