

CRM-A-607-MA-2016 (O & M)

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

CRM-A-607-MA-2016 (O & M)

Date of Decision: 23.09.2016

Bhupender Singh

... Applicant-appellant

Versus

Manju Aggarwal

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Sudhir Hooda, Advocate,
for the applicant-appellant.

INDERJIT SINGH, J.

CRM-10079-2016

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 32 days in filing the application seeking leave to appeal, is condoned.

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Applicant-Bhupender Singh has filed this application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') seeking permission for leave to appeal against respondent-Manju Aggarwal, challenging the impugned judgment dated 23.12.2015 passed by learned Judicial Magistrate Ist Class, Rohtak, in criminal complaint No.378 dated 17.05.2013, titled as 'Bhupender Singh vs. Manju Aggarwal' filed under Section 138 of the Negotiable Instruments

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Act, 1881 (for brevity, 'N.I.Act') vide which the respondent-accused 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 the impugned judgment passed by learned Judicial Magistrate Ist Class, Rohtak, acquitting the respondent under Section 138 of the N.I.Act, suffers from illegality and irregularity and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal may be granted.

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

From the record, I find that applicant-complainant, Bhupender Singh filed a complaint against respondent-accused, Manju Aggarwal, under Section 138 of the N.I.Act. It is mainly stated in the complaint that the respondent borrowed a sum of Rs.9,50,000/- from the complainant and assured to repay the same within 5-6 months. When the complainant demanded back the said amount, the respondent-accused with a view to clear her liability issued cheque No.008498 dated 30.01.2013 for ₹9,50,000/- which on presentation for encashment was returned with remarks “*payment stopped*”. Legal notice was issued to the respondent and when the payment was not made, the complainant filed the complaint.

Learned Judicial Magistrate Ist Class, Rohtak, after appreciating the evidence, acquitted the respondent-accused vide

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impugned judgment dated 23.12.2015.

A bare perusal of record reveals that in the present case, the respondent-accused has raised the probable defence. As per the accused, cheque in dispute was misplaced and she got the FIR/DDR registered on 24.08.2012, in the Police Station Civil Lines, Rohtak, which is Ex.D-6. Perusal of the document, Ex.D-6, reveals that an information was given to the Station House Officer, Police Station Civil Lines, Rohtak regarding loss of cheque No.008498 which is the disputed cheque. This information was given on 24.08.2012 whereas as per the complainant, cheque was issued on 30.01.2013 and legal notice was given on 20.03.2013. The accused has also proved by examining DW 1, Ram Kishan, record-keeper, SBI that he had made an application on 25.08.2012 to the bank for stopping the payment from his account. Considering that the information given to the police was prior to the issuance of legal notice as well as the date of cheque and further the instructions were also given to the bank to stop the payment at that very time and in view of the fact that the accused has maintained her stand in the cross-examination of the complainant and also in her statement under Section 313 Cr.P.C. that the cheque in question was never issued to the complainant, it goes on to prove the existence of the fact that the disputed cheque was never issued by the accused to the complainant. Otherwise also, the complainant is stated to be a resident of District Rohtak whereas the accused is stated to be a resident of Bhiwani. Nothing is there as to why a huge amount of ₹9,50,000/- has been given

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to the accused without getting executed any document like pronote, agreement or receipt etc. Furthermore, no date, month or year has been mentioned, when the loan amount was given. No particular regarding the mode of payment to the accused or regarding the capacity of the complainant has been proved by him. Furthermore, there is no document to show that any loan transaction took place between the complainant and accused. There is also no mentioning of date when the loan amount was demanded. Moreover, no income-tax return has been filed. As per Section 269 SS of the Income Tax Act, 1961, even the amount of more than ₹20,000/- cannot be given in cash.

Keeping in view all these facts, learned Judicial Magistrate Ist Class, Rohtak has correctly held that the presumption under Section 139 of the N.I.Act has been rebutted. The findings given by learned trial court are correct and evidence has been appreciated in right perspective.

At the time of arguments, nothing has been pointed out as to how the findings given by learned trial Court are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the learned Court below. Nothing has been pointed out as to what illegality has been committed by the court below while acquitting the accused.

From the above discussion, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

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Therefore, finding no merit in the present application under
Section 378 (4) Cr.P.C., the same is dismissed.

23.09.2016

parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No