

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

CRM No.A-648-MA of 2016 (O&M)

Date of decision: August 22, 2016

Smt.Poonam Devi

...Applicant

Versus

Krishan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sat Narain Yadav, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Smt.Poonam Devi has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Krishan Kumar, challenging the impugned judgment dated 23.02.2016 passed by learned Judicial Magistrate Ist Class, Mohindgarh, 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 Smt.Poonam Devi filed a complaint against accused Krishan Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused borrowed a sum of ₹10 lacs from the complainant. The said amount was

assured to be repaid within few months. In order to discharge this legal

liability, the accused issued a cheque No.177241 dated 07.05.2011 amounting to ₹10 lacs in favour of the complainant, which on presentation for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was issued. When the payment was not made, then the complaint was filed within time.

Learned JMIC, Mohindergarh, after appreciating the evidence on record acquitted the accused-respondent.

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

From the perusal of the record, especially the impugned judgment, I find that the findings given by learned JMIC, Mohindergarh, are correct, as per evidence and law. In no way, the findings can be held as perverse. 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 given by learned Court below are illegal.

First of all, the perusal of the record shows that no particulars regarding the loan amount of ₹10 lacs has been given in the complaint. No date, month and year has been mentioned as to when the loan was given. No mode of payment of loan, whether cash or by cheque, has been mentioned. No place has been mentioned as to where the amount was given and in whose presence. Nothing has been mentioned in the complaint that from where this amount came to the complainant, who is stated to be LIC agent only. The complainant has also not led any documentary evidence to show this loan transaction. No security document was taken at the time of

advancing the such a huge amount. No source of income has been proved

by the complainant. No document of any type has been brought on record including income tax return or the bank account statement to show the transaction. The accused has taken the defence that he has no concern with the complainant regarding any type of payment and alleged cheque was drawn by complainant by cheating and she had no concern with the cheque because the above-said cheque was given by accused to D.K.Yadav for installing mobile tower at the house of accused and the above-said cheque was given to D.K.Yadav in lieu of security only and the present complainant and D.K.Yadav are co-related with each other.

Learned JMIC, Mohindergarh, after perusal of the cheque Ex.PW1/A has held that it itself raised doubt on its genuineness. The careful perusal of the amount of cheque raises suspicion of adding number one and last zero after the fulfillment of cheque. Furthermore, the accused has also examined Handwriting and Fingerprint Expert DW-5 Jaivir Singh, who has also proved that the disputed writing is not written by the writer of the specimen writing and is forged by the way of simple impersonated forgery.

In view of above, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence, which is supported and corroborated by evidence of the complainant as well as defence evidence.

The perusal of the findings given by learned Magistrate shows that these are correct, as per law and have been given while appreciating the evidence on record in right perspective. In no way, the findings can be held as perverse. The impugned judgment dated 23.02.2016 passed by learned

any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

August 22, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No