

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

CRM No.A-1558-MA of 2015 (O&M)

Date of decision: October 19, 2016

Gurdev Singh

...Applicant

Versus

Vikramjit Singh alias Vicky and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mukand Gupta, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Gurdev Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Vikramjit Singh alias Vicky and M/s Satnam Singh Trading Company, challenging the impugned judgment dated 15.07.2015 passed by learned Judicial Magistrate Ist Class, Zira, vide which the accused-respondents were 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 Gurdev Singh filed a complaint against accused Vikramjit Singh alias Vicky and M/s Satnam Singh Trading Company under Section 138 read with Section 142 of the

discharge the existing liability, accused Vikramjit Singh issued the cheque bearing No.740757 dated 14.01.2013 for a sum of ₹2 lacs, which on presentation before the bank for encashment, was returned back unpaid with the remarks 'Insufficient Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Zira, after appreciating the evidence, acquitted the accused-respondents.

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 have been given by learned JMIC, Zira, while appreciating the evidence in right perspective. In no way, the findings can be held as perverse. 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 law and what illegality has been committed by learned Court below.

First of all, I find that no particulars have been mentioned as to on which date, month and in which year the loan was given, what was the mode of payment and no other particulars i.e. at which place and in whose presence the loan was given etc. Secondly, I find that even in the affidavit given by the complainant while appearing as witness, he has not mentioned any date, month or year as to when the loan was given. In cross-examination, when a question was asked, the complainant gave the date of advancement of loan as 15.12.2013 whereas the cheque is of 14.01.2013.

date of advancement of loan has been inadvertently typed as 15.12.2013 instead of 15.12.2012. Even if it is taken as it is, then the complainant also stated in cross-examination that after two days, the cheque was given, which means that the cheque was given on 17.12.2012 but it is nowhere the case of the complainant that the cheque was a post-dated cheque and given on 17.12.2012.

Furthermore, there is no document on the record to show the loan transaction. No security document was taken nor there is friendly relation of the accused with the complainant. The Court in the facts and circumstances held that complainant failed to prove the advancement of the loan. From the evidence of the complainant, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

In view of the above discussion, I find that the impugned judgment dated 15.07.2015 passed by learned JMIC, Zira, 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.

October 19, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No