

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

CRM No.A-1636-MA of 2015 (O&M)
Date of decision: May 26, 2016

Jaspal Singh

...Applicant

Versus

Bhupinder Singh Saggu

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Maninder Singh Bajwa, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Jaspal Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhupinder Singh Saggu, challenging the impugned judgment dated 10.08.2015 passed by learned Judicial Magistrate Ist Class, Amritsar, 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 that by acquittal of accused-respondent, miscarriage of justice has been done. 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 Jaspal Singh filed a complaint against accused Bhupinder Singh Saggu under Section 138 of the

Negotiable Instruments Act. As per the complainant's version, accused took a personal loan of ₹6 lacs from the complainant and promised to pay the same in a short period. The accused in order to discharge his legal debt/liability, has issued cheque bearing No.868180 dated 10.11.2006 for a sum of ₹6 lacs, in favour of complainant, 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.

The accused took the defence that he has already returned the entire loan amount to the complainant. The complainant issued receipt dated 02.03.2007 Ex.D1 acknowledging the receipt of loan amount. The complainant has filed the present complaint against him to put pressure upon him to get the amount recovered from Smt.Sukhwant Kaur and Harminder Arora as the said Sukhwant Kaur and Harminder Arora also took loan amount from complainant and executed agreement to sell dated 12.01.2004 Ex.D2 in favour of complainant as security and the accused had signed Ex.D2 as attested witness. The accused further stated that the complainant had taken the blank signed cheques, signed blank stamp papers, blank signed papers and two signed cheques in the name of wife from him as security at the time of advancing loan.

Learned JMIC, Amritsar, after appreciating the evidence in right perspective, found that receipt Ex.D1 as valid. The said document Ex.D1 has been written and executed between the complainant and the accused on the same day and attested by the Executive Magistrate in the presence of witness Kishan Lal, who deposed as DW-1.

The complainant relied upon the document Ex.C5 but the

document Ex.C5 is of the year 2006 whereas Ex.D1 was executed later on i.e. on 02.03.2007. This receipt Ex.D1, which is like an affidavit, has been duly attested by the Executive Magistrate.

I find that findings given by learned Court below in the impugned judgment dated 10.08.2015 are correct, as per evidence and law. Learned JMIC, Amritsar, has appreciated the evidence in right perspective. 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.

The document Ex.D1 affidavit type receipt of the complainant shows that he has received amount from the accused and nothing remains due. This fact rebuts the presumption under Section 139 of the Negotiable Instruments Act.

In view of the above discussion, I find that the findings have been given by learned JMIC, Amritsar, while appreciating the evidence in right perspective. The impugned judgment dated 10.08.2015 passed by learned JMIC, Amritsar, 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 for grant of leave to appeal and therefore, the present application stands dismissed.

May 26, 2016
Vgulati

(INDERJIT SINGH)
JUDGE