

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

CRM No.A-1653-MA of 2015 (O&M)
Date of decision: May 26, 2016

Jaspal Singh

...Applicant

Versus

Hardip 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 Hardip 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 Hardip Singh Saggu under Section 138 of the

Negotiable Instruments Act. As per the complainant's version, accused had friendly relations with the complainant and had taken an interest free loan of ₹4,50,000/- from the complainant. The accused in order to discharge his legal debt/liability, has issued cheque bearing No.013893 dated 01.01.2007 for a sum of ₹4,50,000/-, 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 is not having any liability towards the complainant. Complainant has already received the entire loan amount from the accused and he issued the receipt regarding the same and he has been falsely implicated in the present case. The accused tendered into defence evidence original receipt dated 02.03.2007 as Ex.D1 and also produced a communication between him and complainant running into five pages and certified copy of the order passed by learned Addl. Sessions Judge, Amritsar as Ex.D2.

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 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