

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

CRM No.A-1690-MA of 2014 (O&M)

Date of decision: May 23, 2016

Satbir Singh

...Applicant

Versus

Harbans Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashwani Kumar Bura, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.33787 of 2014

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 15 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-1690-MA of 2014

Applicant-Satbir Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Harbans Lal, challenging the impugned judgment dated 16.08.2014 passed by learned JMIC, Kaithal, 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 also stated that there are sufficient grounds on the basis of which the impugned

judgment dated 16.08.2014 is liable to be set aside. 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 Satbir Singh filed a complaint against accused Harbans Lal under Section 138 of the Negotiable Instruments Act. As per the complainant's version, he is a Govt. Employee and accused was a close friend of him. The accused approached the complainant in the first week of October 2009 and requested him to lend a sum of ₹1,50,000/- and same amount was paid by the complainant to the accused with the promise that the same will be refunded within a period of one year. In the month of January 2011, the accused in discharge of his legally enforceable liability, issued a post dated cheque bearing No.036940 of ₹1,15,000/- dated 30.05.2011, which on presentation for encashment, was returned back unpaid with the remarks 'payment stopped by the drawer'. Legal notice was served upon the accused. The accused sent reply through his Advocate and took the plea with regard to cheque being stolen. When the amount was not paid, then the complaint was filed within time.

Learned Magistrate, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 16.08.2014.

I find that findings given by learned Court below in the impugned judgment dated 16.08.2014 are correct, as per evidence and law. Learned JMIC, Kaithal, 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. Nothing has been pointed out as to how the findings given by the Court below are against the evidence and law.

It is admitted and proved on the record that legal notice was given by one Satish Kumar instead of complainant Satbir Singh. The accused has given the reply to the legal notice. The notice was given through counsel, in which counsel stated that on the instructions of Satish Kumar, he is issuing notice and now the applicant is taking the plea that it was clerical mistake. The perusal of the record shows that in the reply to the notice, accused has stated that complainant Satbir Singh is brother of Satish Kumar. It is also on the record that accused has filed complaint against Satish Kumar and Satbir Singh in which both of them have been summoned but as argued, that complaint has been got dismissed as withdrawn.

I have perused the copy of the complaint and the other record. There is no averment that Satish Kumar is not brother of complainant Satbir Singh. Otherwise also, no cogent evidence has been produced to show that Satish Kumar is not brother of Satbir Singh. When the legal notice was given by Satish Kumar to the accused and no legal notice was issued by complainant Satbir Singh, therefore, necessary ingredient of offence under Section 138 of the Negotiable Instruments Act is missing. The accused-respondent has been rightly acquitted by learned Magistrate. Learned Magistrate has also discussed the defence evidence in detail.

In view of the above discussion, I find that the findings have been given by learned JMIC, Kaithal, while appreciating the evidence in right perspective. The impugned judgment dated 16.08.2014 passed by learned JMIC, Kaithal, 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 23, 2016
Vgulati

(INDERJIT SINGH)
JUDGE