

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

CRM No.A-1710-MA of 2014 (O&M)

Date of decision: October 19, 2016

Pritpal Singh

...Applicant

Versus

Balbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Bansal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Pritpal Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Balbir Singh, challenging the impugned judgment dated 07.08.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 Pritpal Singh filed a complaint against accused Balbir Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused raised a loan from the complainant for his personal necessity and in order to discharge his legal

and financial liability towards the complainant, he issued a cheque bearing

No.088437 dated 06.02.2008 for a sum of ₹1 lac, which on presentation before the bank for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1 and further examined expert witness Fateh Chand as CW-2. At the close of the complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and claimed himself as innocent. Accused stated that he has been falsely implicated in the present case and he has no liability towards the complainant. In fact, on 05.02.2008, when his son Manoj Kumar was taken into custody by PO staff on the complaint by Pritpal Singh on mobile phone stating that his son was a proclaimed offender in one complaint under Section 138 of the Negotiable Instruments Act filed by Pritpal Singh against his son and upon this PO staff had taken his son into custody. On the same day, he was called at Police Station Division No.4, Jalandhar and there in order to release his son, he had given the cheque in question after signing the same and filling the amount to Pritpal Singh but he had not filled the name of Pritpal Singh and the date in the cheque in question. The accused further stated that thereafter in the presence of respectables, the matter was sorted out and ₹75,000/- was given by him to the complainant in cash and writing Ex.D1 was scribed. When the complainant was asked to return the cheque, then he stated that he has left the same at home and promised to return the same but later on, that cheque was misused.

The accused also examined DW-1 Tarsel Lal, Ahlmad, who

proved the filing of the FIR by the present accused against the complainant

under Sections 406, 420 and 120-B IPC. DW-2 Head Constable Gobinderjit Singh also deposed regarding the FIR. DW-3 Uma Shankar deposed regarding the compromise and supported the defence version.

Learned JMIC, Jalandhar, after appreciating the evidence, 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 have been given by learned JMIC, Jalandhar, 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 date, month and year has been mentioned as to when the loan was given to the accused. However, in the evidence, it has come that loan was given in the year 2007 but no particulars of any type have been mentioned that in whose presence, at which place the loan was given and what was the mode of the payment.

At the time of arguments, learned counsel for the applicant admitted that the complainant filed the complaint under Section 138 of the Negotiable Instruments Act against the son of the accused, in which son of the accused was declared proclaimed offender. The perusal of the evidence shows that complainant has admitted his signatures on Ex.D1 and also the

has been written later on and qua this, he also examined expert witness as CW-2 but as per learned lower Court, it makes no difference whether the amount was filled at that time or later as in the writing it has been written by the complainant that he has received the entire amount. It looks improbable that when the complainant has already filed a complaint against the son of the accused under Section 138 of the Negotiable Instruments Act, he will give money to the accused without getting executed any security document. No record of any type has been produced on the file to show the transaction.

Furthermore, the complainant is running a finance business, therefore, it looks improbable that a financier would give loan to a person with whom he has no friendly relation and without getting executed any security document. The defence raised by the accused is probable and the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. The accused has already got registered the FIR under Sections 406 IPC etc. against the complainant for misusing the cheque, which fact has been duly proved by DW-2.

In view of the above discussion, I find that the impugned judgment dated 07.08.2014 passed by learned JMIC, Jalandhar, 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