

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

CRM No.A-186-MA of 2015 (O&M)

Date of decision: December 13, 2016

Mukesh Sharma

...Applicant

Versus

Gaurav Goyal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.K.Bagri, Advocate
for the applicant.

Mr.S.N.Yadav, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Mukesh Sharma has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Gaurav Goyal, challenging the impugned judgment dated 22.11.2013 passed by learned Judicial Magistrate Ist Class, Rewari, 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 further stated that the applicant would suffer an irreparable loss in case leave to appeal is not granted to him. It is, therefore, prayed that leave to appeal be granted.

complaint against accused Gaurav Goyal under Section 138 read with Section 142 of the Negotiable Instruments Act. As per complainant's version, in the month of November 2011, accused has borrowed ₹1 lakh and the accused has assured the complainant that he will return the above-said amount before 10.12.2011. Accused issued cheque bearing No.106732 dated 12.12.2011, which on presentation for encashment, was returned back with the remarks 'insufficient funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused examined DW-1 Ashok Goyal, DW-2 Vidhyanand and DW-3 Rohtash Singh, Clerk Sales Tax.

Learned JMIC, Rewari, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 22.11.2013.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of motion was issued and learned counsel for the respondent appeared and contested the application.

I have heard learned counsel for the parties and have gone through the record.

In the cross-examination, the complainant has admitted that he has received two cheques of ₹15,000/- each from the accused on 16.02.2012 and 20.02.2012 but the complainant denied the fact that father of accused returned ₹20,000/- in cash to the complainant in lieu of the cheque amount. The complainant stated that those cheques were received for previous transactions but the complainant has failed to show that there was any

previous transaction between the parties. It is neither pleaded in the

complaint nor it was in the chief-examination of the complainant nor any other evidence has been produced to show the previous transaction between the parties.

The accused also examined his father as DW-1 Ashok Goyal, who deposed that his son borrowed ₹1 lakh from Mukesh Sharma. He further stated he borrowed ₹20,000/- from Vidhyanand to make payment to the complainant. DW-2 Vidhyanand was also examined, who supported this fact. DW-3 Rohtash, Clerk, Sales Tax Office, was also brought into the witness box to prove the balance sheet, where, as argued, this amount has been shown.

Learned Magistrate after discussing the law held that legal notice was given demanding ₹1 lakh whereas the accused has shown and proved the payment of ₹30,000/- by cheques and has led evidence to prove that ₹20,000/- has been paid in cash, as per law. If the complainant demands more than due amount from the accused in the legal notice, then that legal notice is illegal. The complainant cannot demand more amount than the amount which is due and payable to him by the accused.

Learned Magistrate after discussing the evidence in right perspective has acquitted the accused. Nothing has been pointed out as how the findings are perverse or against the evidence. 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. In no way, the findings can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 22.11.2013 passed by learned JMIC, Rewari, is correct, as

No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

December 13, 2016
Vgulati

Whether speaking/reasoned
Whether reportable

(INDERJIT SINGH)
JUDGE

Yes
No