

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

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2016-08-22 11:48
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Criminal Misc.No.A-1873-MA of 2015 (O&M)

Date of decision: 25th July, 2016

Gian Chand

...Applicant

Versus

Paramjit Singh Nehra

...Respondent

CORAM: HON'BLE MR. JUSTICEINDERJIT SINGH

Present: Mr. Ajay Kumar Kansal, Advocate,
for the petitioner.

INDERJIT SINGH, J.

Applicant Gian Chand has preferred the instant application under Section 378(4) Cr.P.C., against respondent Paramjit Singh Nehra, for grant of leave to file an appeal against the impugned judgment dated 29.09.2015, passed by the learned Judicial Magistrate Ist Class, Jind, vide which respondent has been acquitted.

It is mainly stated in the application that accompanying appeal has been filed which is likely to succeed. It is further stated that the impugned judgment dated 29.09.2015, passed by the learned trial Court vide which the respondent-accused has been ordered to be acquitted of the charge, levelled against him, is totally illegal, erroneous, perverse, without jurisdiction and based on surmises and conjectures beyond pleadings and perverse. It is prayed that leave to file an appeal against the impugned judgment be granted to the applicant.

Brief facts of the case are that Gian Chand filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the accused. It is mainly stated in the complaint that accused was known to the son of the complainant and both of them were serving in M.M.Engineering

College, Mullana. Accused used to take money from the complainant for his requirements. In all, he had taken a sum of Rs.5,80,000/- as friendly loan from the complainant. In the first week of May, 2012, the complainant needed money and he demanded the same from the accused. On 24.05.2012, the accused came to Jind to the house of complainant and in discharge of his liability, handed over a cheque No.960055 dated 24.05.2012 in the sum of Rs.5,80,000/- from his bank account. The cheque, on presentation for encashment, was returned with the report 'accused has closed the account.' Hence, the said complaint was filed.

The learned trial Court, after appreciation of evidence, acquitted the accused, vide impugned judgment dated 29.09.2015.

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

Perusal of the impugned judgment shows that it has been passed by appreciating the evidence in the right perspective. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and as to which material evidence has not been considered by the learned trial Court. Nothing has been pointed out as to how the findings returned by the learned Court below are perverse or against the law. Perusal of the record itself shows that the complainant did not give the particulars regarding the loan. No date, month or year has been mentioned as to when the loan was advanced. No particulars have been given as to on which date, how much money was given. No other particulars as to in whose presence amount was given and through which mode whether cash or cheque etc., the amount was given, have been proved on record. The accused has taken the defence that when his cheque book was lost regarding which he informed the

bank on 15.02.2010, then question of issuance of cheque on 24.05.2012 does not arise. There is also no document on record to prove the loan transaction. In cross-examination, the complainant deposed that he paid the amount of Rs.5,00,000/- on 10.07.2007, Rs.49,000/- on 10.09.2008 and Rs.40,000/- on 11.09.2008. He is a retired government official on pension of Rs.15,000/- per month. The capacity of the complainant to pay such a huge amount has not been proved. There is no evidence as to from where he withdrew the said amount and paid to accused. As per Section 269SS of the Income Tax Act, no loan more than Rs.25,000/- can be advanced except through account payee cheque etc. An amount of Rs.5,00,000/- and other amount have not been shown in the income tax return. No security document, receipt, pronote etc. has been got executed by the complainant while giving such a huge amount to accused. The presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused by raising probable defence which is duly supported and corroborated from the complainant's evidence as well as from defence evidence.

From the above discussion, this Court finds that the impugned judgment, passed by the learned trial Court, in no way can be held as perverse or against the law.

Therefore, finding no merit in the application for grant of leave to file an appeal, the same is dismissed.

25th July, 2016
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(INDERJIT SINGH)
JUDGE