

CRM-A-653-MA-2015

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

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Date of Decision: 01.12.2016

Satbir Singh

... Applicant

Versus

Amarjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Ashit Malik, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant-Satbir Singh has filed this application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') seeking permission to leave appeal against respondent-Amarjit Singh, challenging the judgment dated 09.02.2015 passed by learned Judicial Magistrate Ist Class, Karnal, in criminal complaint No.837 dated 09.08.2012, titled as 'Satbir Singh vs. Amarjit Singh', filed under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act') vide which the respondent-accused 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 trial Court has misread the evidence produced by the applicant and ignored settled proposition of law. It is also stated that the impugned judgment passed by learned Judicial Magistrate Ist Class, Karnal,

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acquitting the respondent under Section 138 of the N.I. Act, suffers from illegality and irregularity and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal may be granted.

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

From the record, I find that applicant-complainant, Satbir Singh filed a complaint against respondent-Amarjit Singh under Section 138 of the N.I. Act. It is mainly stated in the complaint that the respondent had dealings in sale and purchase of tractors and their implements with the complainant. The respondent approached the complainant to borrow an amount of ₹4,60,000/- and promised to return the aforesaid amount within six months. On his request, the complainant paid the amount of ₹4,60,000/- to the respondent. When the complainant demanded back the said amount, the respondent with a view to clear his liability issued cheque No.1459828 dated 07.06.2012 for ₹4,60,000/-, drawn at Punjab & Sind Bank, Branch Pipli, Kurukshetra, in favour of the complainant, which on presentation for encashment was returned unpaid with remarks “*Funds Insufficient*”. Legal notice was issued to the respondent and when the payment was not made, the complainant filed the complaint.

On the other hand, the respondent denied the fact that the complainant is known to him. He also stated that he never borrowed an amount of ₹4,60,000/- from the complainant. There was no occasion for him to issue the cheque in question in discharge of legally enforceable debt/liability. He also stated that one person namely Gurcharan Singh working as a commission agent was relative of the complainant. The

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respondent had stopped selling his agricultural produce at the shop of Gurcharan Singh but he did not return the blank cheque lying with him as a security cheque. Gurcharan Singh handed over the cheque in question to the complainant who misused the same to file a false complaint against him.

Learned Judicial Magistrate Ist Class, Karnal, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 09.02.2015.

At the time of arguments, nothing has been pointed out as to how the findings given by learned trial Court 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 learned court below. Nothing has been pointed out as to what illegality has been committed by the court below while acquitting the accused.

From the record, I find that there is no document on record to prove the dealings regarding tractors and their implements between the parties. There is nothing on record to show that the complainant and respondent had friendly relations. The documents Mark-A to Mark-K, produced by the complainant, do not show any sale and purchase of tractors by the respondent or his relatives. Furthermore, no date, month and year has been mentioned as to when loan was given to the respondent. Moreover, it is not mentioned as to when loan was raised by the respondent from the complainant. There is no document on record to show that the aforesaid loan transaction had taken place. It is the specific case of the complainant that no document was got executed by the respondent. At the time of evidence, the complainant produced pronote (Mark-L) to show that

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₹4,40,000/- were given to the respondent who was required to pay the amount of ₹20,000/- as interest upon principal amount of ₹4,40,000/-. The trial Court has discussed this evidence and disbelieved it by holding that firstly, the complainant denied the execution of any pronote, secondly it is not the case of complainant that the amount was given on interest and thirdly it is also not the case of complainant that any security document or pronote has been got executed. Furthermore, the complainant claimed that he advanced ₹4,60,000/- whereas, as per pronote, ₹4,40,000/- were given. The trial Court also discussed other discrepancies in the evidence of the complainant. The respondent also tendered J Forms Ex.D-2 to Ex.D-10 to show that he was selling crops on the shop of Gurcharan Singh. Though the respondent could not establish on record the relationship between the complainant and Gurcharan Singh, but from the evidence of complainant, itself, presumption raised against the accused, has been rebutted. The accused has raised probable defence which is duly supported from the case of complainant

From the above discussion, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) Cr.P.C., the same is dismissed.

01.12.2016

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No