

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

CRM No.A-839-MA of 2015 (O&M)

Date of decision: December 07, 2016

Shiv Dutt

...Applicant

Versus

Prem Chand Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Johan Kumar. Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Shiv Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Prem Chand Sharma, challenging the impugned judgment dated 19.03.2015, passed by learned Judicial Magistrate Ist Class, Faridabad, 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, complainant-Shiv Dutt filed a complaint against accused Prem Chand Sharma under Section 138 of Negotiable Instruments Act. As per complainant's version, for the repayment of loan taken by the accused, after admitting his liability, he has issued cheque

bearing No.699819 dated 08.07.2011 for Rs.4,92,034/- in favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Fardiabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 19.03.2015.

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

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

From the record, I find that learned JMIC, Faridabad has given the finds after appreciating the evidence in right perspective. No illegality has been committed by the learned trial Court nor the findings, in any way, can be held as perverse. 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.

The perusal of the complaint itself shows that no date, month and year has been given as to when the loan was advanced. No particulars of loan have been given i.e. at which place and in whose presence the loan was given. Whether, total loan was given at one time or on regular intervals. At the time of arguments, learned counsel for the applicant argued that this loan has been given at some regular intervals. The accused has denied the evidence of the complainant and has pleaded false implication and innocence. In defence, the accused examined DW-1 Hori Lal, DW-2 Jai

examined himself as DW-3.

The Handwriting and Finger Print Expert stated that wording on the cheque is not in the hand of the accused. Furthermore, there is no document to show the loan transaction between the parties. No income tax record has been produced to show this amount in dispute.

Learned Magistrate held that it looks improbable that loan of Rs.4,92,034/- has been taken. There is no averment in the complaint that loan amount was given on interest and the amount of loan has become like this. The Court held that if a person takes a loan, he will take as Rs.4,92,000/- or it can be Rs.4,92,100/-. The Court further held that accused is the husband of real sister of complainant and certain facts have been emerged from the case file, which go to show that relations between both the parties are very much strained. It is also stated that the real brother of the complainant is deposing against him and in favour of accused, who is brother-in-law of complainant.

Further, in the cross-examination, the complainant has deposed that money was advanced by him to the accused as accused required the same for opening a medical shop but at the time of arguments, learned counsel for the applicant argued that the loan was given in installments at some regular intervals. The Court below has also discussed the defence evidence produced by the accused.

Keeping in view the defence version raised by the accused, which is supported by case of the complainant as well as the defence evidence, I find that the presumption under Section 139 of the Negotiable Instruments Act, has been duly rebutted.

In view of the above discussion, I find that the impugned

judgment dated 19.03.2015, passed by learned JMIC, Faridabad, 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.

December 07, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No