

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

CRA No.AS-157 of 2016 (O&M)

Date of decision: May 04, 2017

Satnam Singh

...Appellant

Versus

Sukhdev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Mannat Anand, Advocate for
Mr.Pritam Saini, Advocate
for the appellant.

Mr.R.S.Longia, Advocate
for the respondent.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the impugned judgment dated 17.01.2014 passed by learned Judicial Magistrate Ist Class, Kurukshetra, vide which the complaint filed by the appellant was dismissed and accused-respondent was acquitted.

The brief facts of the case as noted down in the judgment passed by learned JMIC, Kurukshetra, are as under:-

“2. The relevant facts leading to present complaint are that the complainant is a proprietor of M/s Chaudhary Traders, which is a proprietorship firm and deals with the business of commission agent in the new Grain market at Babain. The complainant used to advance money to the farmers of the adjoining area in furtherance of business of Commission Agent in the New Grain Market at Babain. It is alleged that the accused approached the complainant and borrowed a sum of Rs.2,73,500/- on 14.2.2007 as a loan. The accused had

acknowledged the receipt of the aforesaid amount by putting his own signature in the Bahi/Account Book maintained by the complainant. It is further alleged that on the next day, the accused again borrowed a sum of Rs.26,500/- from the complainant and in this way, the total amount of loan borrowed by the accused comes to Rs.3,00,000/-. The accused had issued the post dated cheque in favour of the complainant for the aforesaid amount of Rs.3,00,000/-. The said cheque bearing number 519118 is concerned with the Canara Bank. The accused assured that the said post dated cheque will be positively encashed on dated 12.5.2007. The complainant presented the aforesaid cheque for payment to the Banker of the accused i.e. Canara Bank at Babain on 12.5.2007 but it was returned with the report of "Funds Insufficient". Therefore, the above said cheque issued by the accused has been dishonoured by the Bank due to insufficient funds in the account of the accused and in this way, accused failed to make the payment of the above said cheque. Thereafter, complainant contacted the accused and requested to make the payment of the cheque but the accused did not pay even a single penny to the complainant. The complainant sent a legal notice dated 1.5.2007 but same was not received by the accused intentionally. Rather accused 'colluded with postman, got false reports to the effect that he is living outside the village and that the same can not be delivered. It is alleged that the accused being permanent resident of village Ram Saran Majra, is residing in the said village. In view of the above circumstances, accused did not make the payment of cheque. Hence, the present complaint has been filed."

The complainant examined himself as CW-1 and tendered documents Ex.C1 to Ex.C5 and closed the evidence. The accused in the statement under Section 313 Cr.P.C. stated that he is innocent and falsely implicated. In defence, accused examined DW-1 Shamsheer Singh Malik and DW-2 Balvinder Singh.

Learned JMIC, Kurukshetra, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 17.01.2017.

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

to file the appeal.

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

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

From the record, first of all, I find that it is the case of the complainant that he used to advance money to the farmers of the adjoining area in furtherance of business of Commission Agent in the New Grain Market at Babain. Learned Magistrate after appreciating the evidence came to the conclusion that as per complainant, accused borrowed a sum of ₹2,73,500/- on 14.02.2007 and ₹26,500/- on 15.02.2007 but there is no record to show payment of ₹26,500/- on 15.02.2007. The complainant relied upon only one document Ex.C1 showing transaction of ₹2,73,500/- but rest of the amount has not been shown in any of the document as per evidence available on file. The Court further held that it was incumbent upon complainant firm to maintain all three account books in regular course of business. Only one document Ex.C1 has been placed on the record. Learned Magistrate further held that figure of ₹3 lakhs as alleged has never been shown in the income tax return and in the balance sheet prepared by the complainant firm as per document Ex.D2 on file. Complainant firm has shown a sum of ₹2,73,500/- in the name of Sukhdev Singh in document Ex.C1 but this figure is not tallied with the figure as shown in the balance sheet EX.D2. The complainant specifically stated in cross examination that accused filled cheque in his own writing and delivered the same to him on different date but writing over cheque can be judged from naked eye that

accused rather same has been filled by some other person. In order to prove this fact, the Handwriting and Fingerprint Expert has also given the report and there is no rebuttal to that fact.

Learned Court below further took note of the fact that there are two signatures of the accused on the back side of the cheque, which a person generally do in 'self' cheque. The accused has taken the defence that he delivered blank signed cheque as security to Rakesh Kumar from whom he was purchasing submersible motor and while dealing with the said Rakesh Kumar, motor was found defective and same was returned to said Rakesh Kumar, who remained dissatisfied with the accused and then said Rakesh Kumar colluded with complainant misused the blank signed cheque. It is also held that legal notice has also not been served. The report on the registered envelope by the postman is that Sukhdev Singh resides outside and second report is that no person in this name resides on the said address.

Learned Magistrate from the evidence on record further held that accused was neither customer of complainant firm nor complainant firm was running business of finance, then why the complainant gave such a huge amount to the accused. DW-2 Balvinder Singh supported the defence of the accused. Further, the defence of the accused is supported by DW-1 Shamsher Singh Malik and from the cross-examination of the complainant.

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. 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 findings

have been given by correctly appreciating the evidence in right perspective.

In view of the above discussion, I find that the impugned judgment dated 17.01.2014 passed by learned JMIC, Kurukshetra, is correct, as per law and evidence and does not require any interference from this Court.

Therefore, finding no merit in the present appal, the same is dismissed.

May 04, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No