

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

CRM No.A-782-MA of 2012 (O&M)

Date of decision: July 24, 2017

Vikas

...Applicant

Versus

Surender Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Puneet Gupta, Advocate
for the applicant.

Ms.Sharmila Sharma, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Vikas has filed this application under Section 378(4) seeking permission for leave to appeal against respondent Surender Singh, challenging the judgment dated 28.05.2012 passed by learned Sessions Judge, Gurgaon, vide which the appeal filed by the accused-respondent against the judgment of conviction dated 14.02.2012 and order of sentence dated 15.02.2012 passed by learned JMIC, Gurgaon, was set aside and 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 if the special leave to appeal is not granted, the applicant will suffer irreparable loss and injury. It is, therefore, prayed that leave to

appeal be granted.

As per the record, the complainant Vikas filed a complaint against accused Surender Singh under Section 138 of the Negotiable Instruments Act (for brevity 'the Act') read with Sections 420 and 422 IPC. As per complainant's version, accused being known to the complainant, asked for a friendly loan of ₹5 lakhs for his business. The complainant acceded the request of the accused and granted a loan of ₹5 lakhs and in order to discharge the above-said legal liability towards refund of loan, the accused issued cheque bearing No.108022 dated 02.09.2008 for ₹5 lakhs in favour of the complainant, which on presentation for encashment, was returned back unpaid, with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused in the statement under Section 313 Cr.P.C., stated that there was no transaction as regards money between the complainant and him. He further stated that he was dealing in property business in partnership with one Anuj and for the same purpose, he had given cheques to Anuj and the present complainant in conspiracy with said Anuj, had taken those cheques and had filed the present complaint against him. He also stated that complaint is false and fabricated and he has not received any legal notice. The accused also entered into witness box as DW-1 and also examined DW-2 Devender Singh, who tendered statement of account Ex.DA.

Learned JMIC, Gurgaon, after appreciating the evidence, convicted and sentenced the accused-respondent to undergo simple imprisonment for a period of six months under Section 138 of the Act and to

i.e. ₹10 lakhs. An appeal was filed by the accused-respondent and learned Sessions Judge, Gurgaon, vide impugned judgment dated 28.05.2012 accepted the same and acquitted the accused-respondent.

Aggrieved from the above-said judgment dated 28.05.2012, present appeal along with application for grant of leave to appeal has been filed.

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

Lower Court record was requisitioned.

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

From the record, I find that there is presumption against the accused that cheque has been given in discharge of legal liability but this presumption under Section 139 of the Act, can be rebutted by the accused by raising probable defence. It is settled law that accused is not to prove his defence beyond reasonable doubt. He is simply to raise probable defence to rebut the presumption. It is also settled law that presumption can be rebutted even from the case of the complainant. The perusal of the judgment in this case shows that presumption has been duly rebutted by the accused by raising probable defence and accused has been rightly acquitted by learned lower Appellate Court.

At the time of arguments, learned counsel for the applicant has not pointed out as to how the findings are perverse or illegal. The perusal of the findings given by learned Sessions Judge, Gurgaon, 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 learned lower Appellate Court.

First of all, in the present case, no particulars i.e. date, month and year have been mentioned in the complaint as to when the loan was advanced. No particulars of any type have been given as to whether the amount was paid in cash or through cheque, at which place and in whose presence the same was given. No security document has been obtained at the time of giving the loan of such a huge amount. In the evidence also, the complainant has not produced any document of any type to prove the loan transaction. There is also nothing on the record to show such a close relation of the complainant with the accused that amount of ₹5 lakhs has been given without taking any security document or without interest.

The complainant in the cross-examination has admitted that he has no source of income and he was a student of B.A. He stated that he has taken money from his father. It is also in the evidence that father of the complainant is a three-wheeler driver. The accused has also produced statement of account of father of the complainant Ex.DA, which shows that there was no withdrawal from his account during that period. In the evidence, it is stated that loan is allegedly advanced in the year 2007. It is further stated that the cheque was given within six months but the cheque is dated 22.09.2008. There is no averment in the complaint or in the evidence that it was a post-dated cheque. It is also in the evidence that complainant could not continue his education after 2005 as there was problem in admission and he resumed his studies in 2007. No evidence has been produced on record to show the capacity of the complainant to lend such a

huge amount.

The perusal of the judgment passed by learned lower Appellate Court shows that the findings have been given correctly by appreciating the evidence in right perspective. In no way, the impugned judgment can be held as perverse or against the evidence. The accused has raised probable defence, which is supported and corroborated by the case of the complainant and defence evidence. The presumption under Section 139 of the Act has been duly rebutted by raising probable defence.

In view of the above discussion, I find that the impugned judgment dated 28.05.2012 passed by learned Sessions Judge, Gurgaon, 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.

July 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No