

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

**CRM No.A-1008-MA of 2013 (O&M)**

**Date of decision: July 18, 2017**

B.S.Dagar

...Applicant

Versus

Ram Kishore Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.R.K.Dhiman, Advocate  
for the applicant.

Mr.Rajesh Lamba, Advocate  
for the respondent.

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**INDERJIT SINGH, J.**

Applicant-B.S.Dagar has filed this application under Section 378(4) seeking permission for leave to appeal against respondent Ram Kishore Singh, challenging the judgment dated 14.06.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby 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 further stated that if the leave is not granted, the complainant-applicant would suffer irreparable loss and injury. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant B.S.Dagar filed a complaint

against accused Ram Kishore Singh under Sections 138, 141, 142 of the Negotiable Instruments Act (for brevity 'the Act'). As per complainant's version, accused entered into an agreement to alienate some of his land in favour of the complainant and the complainant paid a sum of ₹11 lakhs through cheque but the accused failed to fulfill his promise and in discharge of his duties and liabilities, accused returned the above money to the complainant vide cheque No.128165 dated 29.11.2010, which on presentation for encashment, was returned back dishonoured, 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., denied all the allegations levelled against him. He stated that as per agreement, complainant is not the owner of the property and he has fraudulently obtained cash of ₹25 lakhs and the cheque in question amounting to ₹11 lakhs from the accused regarding which the accused has lodged FIR No.173 dated 27.06.2001 in Police Station Dwarka under Sections 420, 467, 471 IPC. The complainant had to return cash of ₹25 lakhs and the cheque, which was not done nor the accused purchased the plot. In defence, accused examined DW-1 SI Vipin Kumar, who produced the summoned record of FIR No.173 dated 27.06.2011 and original agreement Ex.DW1/B. Document was also tendered into evidence.

Learned JMIC, Gurgaon, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 14.06.2012.

Aggrieved from the above-said judgment, 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.

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 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.

Learned counsel for the applicant argued that complainant wanted to purchase the land from third party and paid some earnest money but later on accused wanted that property and has given this cheque of ₹11 lakhs to the complainant, which included marginal money and profit of the complainant. Learned counsel for the applicant has specifically denied that applicant ever entered into agreement to purchase the land from the accused.

After going through the record, especially the statement of CW1-complainant, I find that there is no such averment or case of the complainant before the trial Court. Whatever argued by learned counsel for the applicant, is totally contradictory with the case of the complainant. Rather, in the evidence as well as in the complaint, it is the case of the complainant that complainant wanted to purchase land from the accused. It is admitted at the time of arguments that no property has been purchased by

the complainant from the accused nor he paid any earnest money to the

accused.

The perusal of the judgment passed by the Court below shows that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 14.06.2012 passed by learned JMIC, 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 18, 2017  
Vgulati

(INDERJIT SINGH)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
No