

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

CRM No.A-132-MA of 2013 (O&M)

Date of decision: December 13, 2017

Devinder Singh

...Applicant

Versus

Mohan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Anuj Balian, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Devinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mohan Singh, challenging the impugned judgment dated 19.11.2012 passed by learned Judicial Magistrate Ist Class, Panchkula, 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.

Earlier, the present application for grant of leave was dismissed by this Court vide order dated 25.09.2013, which was challenged before the Hon'ble Supreme Court vide SLP (Crl.) No.5701 of 2014. The above-said SLP has been allowed vide order dated 16.10.2015 and judgment passed by

this Court is set aside and the matter is remitted back to this Court for

disposal in accordance with the observations made in the order.

From the record, I find that the complainant Devinder Singh filed a complaint against accused Mohan Singh under Section 138 of the Negotiable Instruments Act read with Section 420 IPC. As per complainant's version, he is doing the business of shuttering and plywood. The accused was having good relations with the complainant and he approached the complainant for friendly loan of ₹3,50,000/- in the first week of 2009. The complainant advanced to the accused friendly loan of ₹3,50,000/-. Accused promised to return the same after a month's time and as such, issued post dated cheque No.056612 dated 05.09.2009, in favour of the complainant, which on presentation for encashment was returned back dishonoured with the remarks 'payment stopped by the drawer'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he denied the incriminating evidence against him and tendered DDR No.27 dated 01.09.2009 Ex.D1.

Learned JMIC, Panchkula, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 19.11.2012.

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.

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. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

Learned Magistrate on the basis of the evidence held that complainant stated that he has no proof to prove that he has capacity to pay ₹3,50,000/-. He does not maintain the account of his business. This statement that complainant is not maintaining the account book of his business i.e. of shuttering and plywood, cannot be believed. If the complainant is doing the business and selling the goods etc., then he might be maintaining record. It is not possible to do business of shuttering and plywood without maintaining the record including bill book. This means that complainant is intentionally not producing the record.

Furthermore, the complainant has stated that he had given goods on credit to almost 100 persons, who are customers of his shop. Even if it is taken as it is, even then, it is not possible for a person to remember so many transactions with 100 persons. Some of the persons will pay part payment at the time of purchasing the goods, some may pay part payment in between etc. and some persons may take goods on credit. So, without maintaining any record, it is impossible to remember all these transactions with 100 customers. Therefore, the version given by the complainant is not believable. The complainant also stated that he had not done any writing with regard to that. There is no document to show this transaction.

The signatures on Ex.C1 are also in different ink and name and

amount are in different ink. The complainant also stated that he does not

know if the accused has stopped the payment of the bank as the cheque has been lost. The accused has duly proved the DDR No.27 dated 01.09.2009 Ex.D1 regarding loss of cheques and the cheque in question is stated to be of 05.09.2009 i.e. after four days of the DDR, which also shows that version of the accused is probable one. Furthermore, the accused has got stopped encashment of the cheques by writing to the bank. All these facts show that defence raised by the accused is probable one, which is duly supported by the evidence of the complainant as well as defence evidence. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by raising probable defence.

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 19.11.2012 passed by learned JMIC, Panchkula, 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 13, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No