

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

CRM No.A-410-MA of 2013 (O&M)

Date of decision: May 01, 2017

Chand Singh

...Applicant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Abhishek Arora, Advocate
for the applicant.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Pardeep Mirpur, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Applicant-Chand Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Punjab and Jasbir Singh, challenging the judgment dated 27.04.2012 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, 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 applicant will suffer an irreparable loss and damage, if the special leave to appeal is not granted. It is, therefore, prayed that leave to

appeal be granted.

As per the record, the complainant Chand Singh filed a complaint against accused Jasbir Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused took a loan of ₹2,75,000/- from the complainant and in discharge of his legal liability, the accused issued a cheque No.194385 dated 17.11.2004 for above-said amount, which on presentation for encashment, was returned back with the remarks 'Limit is under NPA for recovery, legal action under process'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In the statement under Section 313 Cr.P.C., the accused denied all the allegations levelled against him and also pleaded his false implication. In defence, accused examined DW-1 Gurmeet Kaur, Handwriting and Fingerprint Expert, who proved on record her detailed report Ex.DW1/A along with photographic charts as Ex.DW1/B to Ex.DW1/N etc. DW-1 Head Constable Raghbir Singh proved the copy of the DDR No.31 dated 18.08.2001 as Ex.DW2/A. DW-3 Head Constable Jaswinder Singh proved the copy of FIR No.55 dated 26.06.2001 as Ex.DW3/A.

Learned JMIC, , after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 27.04.2012.

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 State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

State counsel 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.

The perusal of the record shows that no date, month and year has been mentioned as to when the amount of ₹2,75,000/- has been advanced by the complainant to the accused. No particulars of any type have been mentioned in the complaint that in whose presence this amount has been given, at which place, for what purpose and what was the mode of the payment. Further, there is no document on record of any type to show this loan transaction. No security document or receipt etc. has been obtained at the time of advancing such a huge amount to the accused.

Learned Magistrate discussed that the complainant admitted in the cross-examination that he has not reflected aforesaid loan amount in the income tax return nor he maintained any account books with regard to the same. The Court below further held that it looks unnatural that a person who does not own a bicycle in his name, will lend such a huge amount. The complainant stated that he has arranged the loan amount from his sister Hamir Kaur but she has also not been examined.

Furthermore, the defence of the accused is that his blank signed cheques have been stolen from the shop and a report to this effect was also lodged with the local police. Accused has examined Handwriting and Fingerprint Expert, who stated that the signatures and the body of the

DDR has been placed on record by the accused showing that his blanks cheques along with signed blank cheques have been stolen from the shop on 18.08.2001 whereas the complainant, in the complaint, has stated that the cheque in question has been given in the year 2004. The defence raised by the accused is probable one. The presumption under Section 138 of the Negotiable Instruments Act has been rebutted by raising probable defence which is duly supported and corroborated by the defence evidence and from the case of the complainant itself.

From the perusal of the judgment passed by the Court below, I find 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 27.04.2012 passed by learned JMIC, Fatehgarh Sahib, 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.

May 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No