

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

CRM No.A-541-MA of 2013 (O&M)

Date of decision: March 20, 2017

Ram Phal

...Applicant

Versus

Sanjay Kumar Kashyap and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.R.Yadav, Advocate
for the applicant.

Mr.Gaurav Tyagi, Advocate
for respondent No.1.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Applicant-Ram Phal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Sanjay Kumar Kashyap and State of Haryana, challenging the impugned judgment dated 12.04.2013 passed by learned Judicial Magistrate Ist Class, Gurgaon, 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 further stated that learned trial Court wrongly acquitted respondent No.1 by misinterpreting the provisions of the Act and by misreading the evidence. It

is also stated that if leave to file appeal is not granted, the applicant would

suffer an irreparable loss and injury. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Ram Phal filed a complaint against accused Sanjay Kumar Kashyap under Sections 138, 141 and 142 of the Negotiable Instruments Act. As per complainant's version, accused borrowed a sum of ₹66,000/- from the complainant for the purpose of improving his business with the promise to return the same at the earlier. In discharge of this liability, the accused issued a cheque bearing No.616028 dated 12.07.2011 for a sum of ₹66,000/- in favour of the complainant, which on presentation for encashment, was returned back along with the remarks "Funds Insufficient". Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused denied the evidence of the complainant and stated that he is not liable to pay anything to the complainant.

Learned JMIC, Gurgaon, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 12.04.2013.

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 respondent No.1 as well as learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned 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

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.

The perusal of the record, first of all, shows that no date, month and year has been mentioned as to when the accused borrowed the amount. Secondly, there is no document on record to show this loan transaction. Thirdly, when the amount was paid, no receipt or security document was got executed. The accused has raised defence that he never took loan from the complainant and stated that the real story of the case is that the accused was a tenant in the premises of the complainant. The said premises was taken on rent vide lease deed dated 29.01.2010, copy of the lease deed is Ex.DX. The said lease deed was for 11 months ending 01.10.2010 but after the validity of this lease deed, the accused-tenant remained in the premises as per oral terms and conditions for a period of 7-8 months. During this period also, the accused used to pay rent in cash to the complainant. The cheque in question was handed over by accused to complainant as security for repayment of rent. It is also the case of the accused that he vacated the rented premises in May-June 2011 and the cheque has been misused by the complainant.

The complainant in cross-examination admitted all the facts except the fact that cheque was given as security to the complainant. The facts regarding lease deed, tenancy and vacation of the house, are admitted by the complainant. The perusal of the record shows that in the complaint, the complainant has nowhere mentioned qua these facts. The defence raised

the Negotiable Instruments Act has been duly rebutted.

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 12.04.2013 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.

March 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No