

CRM-A-647-MA-2013

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

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Date of Decision: 04.09.2017

Sushma Rani

..Applicant/Appellant

Versus

Urmil Garg

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Angel Sharma, Advocate for
the applicant.

Mr. Ankush Singla, Advocate for
Mr. Aakash Singla, Advocate,
for the respondent.

INDERJIT SINGH, J.

Applicant-Sushma Rani has filed this application under Section 378 (4) read with Section 372 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') seeking permission for leave to appeal against respondent-Urmil Garg, challenging the impugned judgment dated 10.01.2013 passed by learned Additional Chief Judicial Magistrate, Sangrur, in Criminal Complaint No.383 dated 18.07.2007, titled as 'Sushma Rani vs. Urmil Garg', filed under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act'), vide which the respondent-accused was acquitted.

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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 the impugned judgment passed by learned Additional Chief Judicial Magistrate, Sangrur, acquitting the respondent under Section 138 of the N.I.Act, is misreading of evidence and, thus, the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued. The respondent put in appearance through her counsel and contested this application.

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

From the record, I find that applicant-complainant, Sushma Rani, filed a complaint against respondent-accused, Urmil Garg, under Section 138 of the N.I.Act. It is stated in the complaint that the accused and her husband purchased agricultural land from the complainant for a sum of ₹11 lacs vide sale deed No.4027 dated 05.03.2007. Out of sale consideration on account of share of accused i.e. half share, she issued cheque bearing No.589861 for a sum of ₹5,50,000/- in discharge of her liability in favour of the complainant. When the said cheque was presented for encashment, the same was returned unpaid with the remarks "*Funds Insufficient*". Thereafter, legal notice was sent to the accused and when the amount was not paid, the complaint was filed within the statutory period.

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To prove her case, the complainant examined 04 witnesses including herself and thereafter her counsel closed the evidence.

Statement of accused under Section 313 Cr.P.C. was recorded wherein she pleaded to be innocent and alleged her false implication by the complainant. The accused has taken the defence that a compromise was effected between the parties and she has already made the payment after receipt of notice to her. The complainant returned the original cheque to the accused after receipt of payment and nothing is due against the accused.

Learned Additional Chief Judicial Magistrate, Sangrur, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 10.01.2013.

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

After hearing learned counsel for the parties and after going through the record, especially the judgment passed by the trial Court, I find that the findings given in the impugned judgment are correct, as per evidence and law. In no way, the findings can be held as perverse or against the evidence. At the time of arguments, nothing has been pointed out as to how the findings are perverse or against the 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.

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From the record, I find that defence of the accused is that the original cheque is with her as she has paid the money and the complainant has returned the same to her. This defence version has been supported from the fact that the original cheque has been produced by the accused in the court. The complainant has nowhere stated in the complaint that the original cheque was lost during the bank transaction. Even in the preliminary evidence, the complainant has not stated so. Even in the legal notice, it is not mentioned that original cheque has been lost. The complaint was filed on 02.07.2017 and DDR regarding loss of cheque was got registered on 20.08.2007 i.e. after a period of one and half months of filing of the complaint. Learned trial Court has also discussed the fact that even in the complaint, it is mentioned that the original cheque is enclosed with the complaint, which means that till filing of the complaint, there was no case of the complainant that the original cheque has been lost. Further, I find that the accused has produced R.S.Balian, Ex.MLA as DW 1, who has supported the defence version by stating that a compromise was effected between the parties with his intervention and the accused made the payment of cheque amount to the complainant in his presence. This fact further supports the defence version.

Keeping in view the above facts, I find that the defence raised by the accused is probable one and by raising the probable defence, the accused has rebutted the presumption under Section 139 of the N.I.Act. From the above discussion, I find that findings given by the

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trial Court are correct and in right perspective and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) read with Section 372 Cr.P.C., the same is dismissed.

04.09.2017

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	No