

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

CRM No.A-859-MA of 2013 (O&M)

Date of decision: December 01, 2017

Rajmal Singh Fauji

...Applicant

Versus

Bhagwan Dass

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arvind Bansal, Advocate
for the applicant.

Mr.Krishan Singh, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Rajmal Singh Fauji has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhagwan Dass, challenging the impugned judgment dated 17.08.2012 passed by learned Judicial Magistrate Ist Class, Kaithal, 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.

As per the record, the complainant Rajmal Singh Fauji filed a complaint against accused Bhagwan Dass under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had

issued a cheque bearing No.856497 dated 30.04.2009 amounting to ₹3 lakhs in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'insufficient funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

After the closure of complainant evidence, the accused was examined under Section 313 Cr.P.C. He denied all the allegations levelled against him and pleaded false implication. In defence, accused examined DW-1 Jarnail Singh, DW-2 Jai Narain, DW-3 Shamsheer Singh and DW-4 Bani Singh Kanwar and also tendered copies of jamabandi, sale deed, mutations etc.

Learned JMJC, Kaithal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 17.08.2012.

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.

I have heard learned counsel for the parties 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

what illegality has been committed by learned Court below.

From the record, first of all, I find that no date, month and year has been mentioned as to when the loan amount was given. There is no particular of any type in the complaint regarding liability as to how it arose. There is nothing as to when the amount was given and at which place and what was the mode of the payment. No security document was taken at the time of giving the loan amount to the accused. No receipt etc. has been obtained. Furthermore, there is no document on the record to show this loan transaction. The accused produced the bank record of the complainant, which shows that no amount had been drawn from the bank.

Furthermore, I find that nobody will lend such a huge amount of ₹3 lakhs to a person whom he does not know. The complainant in the cross-examination admitted that before 30.04.2009, he met accused Bhagwan Dass once about three years back. Complainant also admitted that he was not knowing accused, rather, he came with one of his relative. The accused stated that he was in business with one Badan Singh and he gave cheque to Badan Singh, which has been misused. Badan Singh appeared as witness in this case, which supports the version of the accused that complainant and Badan Singh have good relations.

Otherwise also, if the amount has been given as loan on 30.04.2009 when the cheque was issued, the complainant could easily tell that this loan was given on 30.04.2009. In the complaint, there is no date as to when the loan was demanded back from the accused. There is nothing on the record to show the source of ₹3 lakhs that from where this amount came to the complainant. Neither account book nor any document has been

produced.

The case of the accused is that he along with Badan Singh was in the business of property dealing. Badan Singh entered into an agreement to purchase a plot of 550 sq. yards with Jai Narain. ₹50,000/- was also paid to Jai Narain as earnest money and the date of payment of remaining balance was fixed as 20.07.2008 and the date of registry was also fixed as 29.03.2009. It is further the case of the accused that a blank cheque No.856497 was also given by the accused to Badan Singh to execute an agreement to purchase a plot. Further, Badan Singh received ₹50,000/- from the accused vide Ex.D1. The defence raised by the accused is probable one. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by raising probable defence which is supported by evidence of the complainant as well as defence evidence.

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 17.08.2012 passed by learned JMIC, Kaithal, 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 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No