

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

CRM No.A-906-MA of 2013 (O&M)

Date of decision: August 10, 2017

Sanjeev Jain

...Applicant

Versus

Suresh Kumar Mehta

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Mamli, Advocate
for the applicant.

Mr.B.S.Bedi, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Sanjeev Jain has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Suresh Kumar Mehta, challenging the impugned judgment dated 29.08.2013 passed by learned Chief Judicial Magistrate, Fatehabad, 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 Sanjeev Jain filed a complaint against accused Suresh Kumar Mehta under Section 138 of the Negotiable Instruments Act. As per complainant's version, he had to obtain

an amount of ₹1 lakh from the accused, for which the accused handed over a

cheque bearing No.540297 dated 30.11.2009 for amount of ₹1 lakh in favour of the complainant, which on presentation for encashment, was returned back dishonoured, with the remarks 'Opening balance is not sufficient to meet the cheque'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned CJM, Fatehabad, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 29.08.2013.

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 the respondent appeared and contested the petition.

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 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 complaint in the present case has been filed on 02.03.2010. The version of the accused is that he has deposited ₹1 lakh in account of the complainant's firm on 13.03.2010 and the statement of account Ex.D1 is proof to that effect. The complainant CW-1 has also admitted this fact. It is

served upon the accused before filing of the complaint. The stand of the accused is that registered envelop sent to him by the complainant was containing a pamphlet of 'Sai Baba' and not a registered legal notice. The legal notice was given by counsel of the complainant Sh.R.K.Verma, Advocate, but he has not been examined as witness to prove the fact that legal notice was sent and no pamphlet was put in the envelop.

At the time of arguments, it is admitted that preliminary evidence has been closed later on and the accused has already deposited ₹1 lakh in the account of the complainant within 11 days of filing of the complaint without knowing the pendency of the complaint. Learned counsel for the complainant argued that there are some other transactions also and this amount of ₹1 lakh has been paid for other transactions but there is no such pleading in the complaint qua other transactions.

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 29.08.2013 passed by learned CJM, Fatehabad, 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.

August 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No