

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

CRM No.A-1621-MA of 2016 (O&M)

Date of decision: March 16, 2017

Sutikshun Kumar

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Diwan S. Adlakha, Advocate for the applicant.

INDERJIT SINGH, J.

Applicant-Sutikshun Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Netar Parkash, challenging the impugned judgment dated 21.07.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 while acquitting the accused has not appreciated the facts on record and passed the order on the basis of conjectures, surmises and presumption. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Sutikshan Kumar filed a complaint against accused Netar Pakash under Section 138 of the Negotiable Instruments Act. As per complainant's version, parties to

doing the business of sale and purchase of property and was in visiting terms with the complainant. The complainant further averred that it was told by the accused to him that he possessed a land near Bank Colony, Kansapur and was also having many plots in District Yamuna Nagar and at that time he showed his desire to purchase a plot of 100 Sq. yards to accused. The complainant further stated that in the month of December, 2012 accused contacted him and told that he has purchased a house measuring 100 Sq. yards in Azad Nagar, Yamuna Nagar and the total cost of the house was stated to him as ₹13.5 lakh by the accused. It is also the case of the complainant that at that time accused had demanded an amount of ₹4 lakhs from him and he in the month of December 2012 gave ₹4 lakhs to the accused in cash as token money but the accused did not execute the sale deed in favour of the complainant. A panchayat was convened and in that panchayat, the accused in discharge of his existing liability had issued a cheque bearing no.668362 dated 06.03.2013 in the sum of ₹4 lakhs, which on presentation for encashment was dishonoured and then accused received his previous cheque and had issued one another cheque bearing no.164510 dated 31.03.2014 in the sum of ₹4 lakhs, which on presentation for encashment, was again dishonoured and returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused took the defence under Section 313 Cr.P.C. that he never borrowed any amount from the complainant, rather the brother of the complainant namely Virender was having good relations with him and he had borrowed ₹17,30,000/- on 04.03.2009 from Virender. He further stated

that the relation between him and Virender became strained in March 2013.

The accused further alleged that Virender had stolen cheque book from his office and distributed cheques to the complainant as well as other persons and got filed several false cases including the present case to put undue pressure upon him. He further stated that the cheque in question neither bears his signatures nor it bears the signature of his son. He further stated that he never received any notice.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 21.07.2016.

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

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 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 perusal of the record, first of all, shows that no date has been mentioned on which ₹4 lakhs was paid as token money. There is nothing on the record to show any agreement to sell, or agreement to purchase the house measuring 100 sq. yards. The complainant in cross-examination has failed to tell the number of the house. The complainant

stated that he did not see the original registered papers of the property qua

which he had made advance payment to the accused. He did not know the number of plot which he intended to purchase. He did not even know the length and breadth of the plot except that the same was measuring 100 sq. yards.

The Court below held that the version of the complainant is doubtful that he paid ₹4 lakhs in cash in lieu of part token of sale consideration of plot and without any writing or receipt to that effect. Learned Magistrate further held that no date of demand of loan or giving the amount has been mentioned. No document has been placed on the record to show this transaction. Learned Magistrate has also relied upon the law laid down by the Hon'ble Supreme Court in *Vijay Vs Laxman & Another 2013 (1) R.C.R (Crim) S.C 1028* and held that the version of the complainant cannot be believed and accused is entitled to acquittal.

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 21.07.2016 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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 16, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No