

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

CRM No.A-1949-MA of 2016 (O&M)

Date of decision: October 30, 2017

Prem Kumar

...Applicant

Versus

Kirshan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sherry K. Singla, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Prem Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Kirshan Singh, challenging the impugned judgment dated 18.08.2016 passed by learned Judicial Magistrate Ist Class, Talwandi Sabo, 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 if the special leave to appeal is not granted, then it will amount to miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Prem Kumar filed a complaint against accused Kirshan Singh under Section 138 of the

Negotiable Instruments Act. As per complainant's version, accused issued a

cheque No.247485 dated 21.01.2015 for a sum of ₹75,000/- in favour of the complainant, in discharge of his legal liability i.e. to repay the loan amount borrowed by the accused from the complainant. The cheque on presentation for encashment, was returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

After the closure of the complainant evidence, the accused was examined under Section 313 Cr.P.C. and denied the correctness of the evidence and pleaded his innocence. In defence, accused examined DW-1 Soma Singh, who deposed that he knew both the parties and the complainant has a shop of pesticides in Maur Mandi. There was dispute between the parties for bargaining of pesticides and complainant had already taken blank cheques from accused as security. This witness further deposed that he got compromised their matter to the extent of ₹20,000/- and a receipt to this regard has been received by the accused which his Ex.D1. Kirshan Singh demanded his blank cheques from the complainant but the complainant said that same were misplaced by him. So, the complainant filed false case against Kirshan Singh by using his cheque of security as there is nothing remain due against the accused. The accused also tendered documents i.e reply to notice Ex.D2 and postal receipts Ex.D3 and D4..

Learned JMIC, Talwandi Sabo, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 18.08.2016.

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 applicant 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.

From the record, I find that in the complaint, no particulars of liability have been given that on which date, in which month and year the loan was given to the accused. There is nothing in the complaint that in whose presence, the loan was given. Whether it was given in cash or by way of cheque. There is no document on the record to show this loan transaction. Even no receipt or any security document has been obtained at the time of advancing the loan. There is also nothing whether the loan was given without interest or with interest. In the complaint, even the complainant has not mentioned regarding reply of the accused to the legal notice and has also nothing stated regarding his defence.

Learned Court below has considered the law laid down in ***Vijay Vs Laxman & Another 2013(1) R.C.R (Crim) S.C 1028***, and appreciated the evidence in right perspective. Furthermore, it looks unnatural and improbable that complainant has given amount of ₹75,000/- as loan without obtaining any receipt or security to the accused to whom he was only knowing as he was visiting his firm. In cross-examination, the complainant has stated that first time he has given the amount on credit. He has no any

relation with the accused and he (accused) only used to visit at the firm where he was working. He admitted that he has not mentioned any date, month or year in his complaint as well as in his evidence when he gave the said amount to the accused.

The receipt Ex.D1 showing the payment of ₹20,000/- by the accused is signed by the present complainant, who stated that he has signed it being employee of the firm but this fact has not been pleaded in the complaint. The defence raised by the accused is supported by the defence evidence as well as from the case of the complainant as there is no document to show the loan transaction nor any particulars have been given as to when the loan was given or when the loan was demanded back.

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 18.08.2016 passed by learned JMIC, Talwandi Sabo, 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.

October 30, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No