

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

Date of decision: 04.07.2017

CRM-A No.1955-MA of 2016

Paresh Dutt Sharma

...Appellant

Vs.

Rakesh Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Parminder Singh, Advocate, for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

This order shall dispose of CRM-A No.1955-MA of 2016 filed by the complainant - appellant seeking leave to appeal against the judgment passed by the learned Judicial Magistrate Ist Class, Patiala on August 20, 2016 acquitting the accused on the ground that the trial Court had made a mistake in recording the acquittal.

I have heard Mr. Parminder Singh and have perused the material findings recorded by the learned Judicial Magistrate Ist Class in Para.13 of his judgment. The relevant extract of which reads as follows:

“Not turning toward the financial capacity of the complainant to lend such an amount of Rs.3 lakh to the complainant in the month of August, 2014. In his cross-examination complainant stated that an amount of Rs.3 lakh was handed over to the accused in cash, taken out of the sale proceed at his patrol pump. To prove the financial capacity complainant brought on record photocopy of sale register Exhibit D2 for the month of July, 2014. Exhibit D2 shows the total sale of 68,000 KG of diesel. Exhibit D2 after shows the community of sale at the end of the month to the extent of

Rs.56,484/-. Thus, from where the complainant fetched the remaining amount out of Rs.3 lakh because complainant have only an amount of Rs.56,484/- of in his hand out of the sale proceed of the diesel. Thus, complainant totally lacks in proving his financial capacity to advance an amount of Rs.3 lakh to the accused at the relevant time. Rather, income tax returns brought on record in the form of Exhibit D1, Exhibit D3 pertaining to complainant and Exhibit D43, Exhibit D44 pertaining to accused shows that accused is in much better financial capacity than that of the complainant, if assessed on the basis of gross total income. Thus, complainant failed to prove on record the existence of legally enforceable debt which is one of the basic ingredients for the Constitution of offence under Section 138 of the Negotiable Instrument Act.”

The gap between the two amounts is sufficient to conclude that the reasoning adopted by the Court below is sound in law and fact. The reasoning given by the learned trial Court is the plausible reasoning on the basis of evidence on record properly appreciated by it. Thus, I do not find any error in the findings recorded by the learned trial Court, which may warrant consideration for grant of leave by way of appeal. Accordingly, the instant application for grant to leave to appeal is dismissed.

04.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>