

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

**CRM No.A-2299-MA of 2016 (O&M)**

**Date of decision: March 08, 2017**

Mohan Singh

...Applicant

Versus

Manoj Kumar

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Munish Bhardwaj, Advocate  
for the applicant.

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**INDERJIT SINGH, J.**

Applicant-Mohan Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Manoj Kumar, challenging the judgment dated 01.10.2016 passed by learned Judicial Magistrate Ist Class, Chandigarh, whereby 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 Mohan Singh filed a complaint against accused Manoj Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused is known to him for the last about five years through common friends. The

investment plan whereby if the complainant invested an amount of ₹15,000/- per month for a certain period and on maturity of plan, the whole of the invested amount along with interest shall be paid by the accused. The complainant invested ₹15,000/- per month with accused upto December, 2014. Matured amount was to be repaid by accused w.e.f. January, 2015 qua said investment. Thereafter, complainant contacted the accused on 13.02.2015 for repayment of invested amount, but accused refused to make the payment. Police was called and accused agreed to make the payment of ₹3,00,000/- within a period of three months and a compromise was executed in this regard on 13.02.2015. The accused made a payment of ₹40,000/- in second week of March, 2015. Thereafter, on 24.05.2015, complainant requested the accused to make the payment of balance amount along with interest. Accused agreed to pay ₹28,000/- as interest on maturity. Thereafter, in order to discharge his legal and financial liability of ₹2,88,000/-, accused issued cheque bearing no.224078, dated 25.05.2015, amounting to ₹1,40,000/- and cheque bearing no.224079, dated 25.05.2015, amounting to ₹1,48,000/-, in favour of the complainant, which on presentation for encashment, were returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Chandigarh, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 01.10.2016.

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.

From the record, first of all, I find that there is no record of depositing of ₹15,000/- per month with the accused. No such document or receipt etc. has been placed on the record to show that ₹15,000/- per month has been deposited. Furthermore, in the complaint, no date, month, year is mentioned from which this amount has been started to be deposited with the accused by the complainant. It is simply stated that amount has been paid upto December 2014. Further, no reliance can be placed on the compromise as it is in the complaint itself that police was called and the compromise was executed on same day. The accused has taken the plea that the compromise in question is under police pressure. It also looks improbable that for one date, the accused would issue two cheques. Why the accused has not issued one cheque for total amount of ₹2,88,000/-.

Furthermore, as per the case of the complainant, the accused agreed to make payment of ₹3 lakhs but as per complainant, as the amount was not paid within time, so the accused agreed to pay ₹28,000/- as interest. Earlier, there was nothing qua the interest and this fact is also not supported by any document. The compromise, as already discussed being under police pressure, cannot be looked into. Learned trial court on the basis of the evidence held that the complainant was employed as Lab Assistant and was earning ₹15,000/- per month. It also looks improbable that he would deposit whole amount of the salary with the accused. The plea of the complainant that he was driving auto-rickshaw and was earning ₹35,000/-, was disbelieved by the Court. Otherwise also, if the accused was doing

is nothing in the evidence that he was working as lab assistant part-time for some hours.

Learned Magistrate further held that document Ex C1 placed on record by the complainant does not find mention that accused ever agreed to pay ₹28,000/- as interest to complainant. Even if it is taken that ₹3 lakhs was to be paid, then the amount after paying ₹40,000/- remains to be recovered i.e. ₹2,60,00/- but the complainant has claimed more amount i.e. ₹2,88,000/- from the accused and there is nothing on the record regarding agreement for payment of ₹28,000/- as interest, which means that the complainant is also asking for excessive payment. Learned Court below further held that there is nothing on record, either documentary or oral which in turn prove the factum of advancement of loan by the complainant and execution of cheques in question qua its repayment. It is further held that it transpired that complainant has put forth a concocted story just to grab money from accused. The accused had taken the plea that he had obtained a loan of ₹1,40,000/- only from complainant, out of which ₹40,000/- has already been repaid to complainant and accused is ready to pay balance amount of ₹1,00,000/- to complainant. It has been further contended that cheques in question, issued as security, have been misused by the complainant in the present case and signatures of accused were taken on compromise Ex C1 under police pressure

At the time of arguments, nothing has been argued 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 given by the Court below are perverse or against the

In view of the above discussion, I find that the impugned judgment dated 01.10.2016 passed by learned JMIC, Chandigarh, 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 08, 2017  
Vgulati

(INDERJIT SINGH)  
JUDGE

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | No  |