

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

**CRM No.A-254-MA of 2016 (O&M)
Date of decision: October 30, 2017**

Gursahib Singh

...Applicant

Versus

M/s Kashmir Lal Raj Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Nakul Sharma, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Gursahib Singh has filed this application under Section 378(4) Cr.P.C. read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondents M/s Kashmir Lal Raj Kumar and Raj Kumar Chug, challenging the impugned judgment dated 04.12.2015 passed by learned Addl. Chief Judicial Magistrate, Sri Muktsar Sahib, vide which the accused-respondents were 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 Gursahib Singh filed a complaint against accused M/s Kashmir Lal Raj Kumar and Raj Kumar Chug under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused have obtained a friendly loan of ₹10 lakhs from him in the presence of Rajinder Sinogh on 25.02.2013 and issued post

dated cheque bearing No.433603 dated 27.02.2103 amounting to ₹10 lakhs

in favour of the complainant, to discharge legal liability. 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 were examined under Section 313 Cr.P.C. and denied the correctness of the evidence and pleaded their innocence. In defence, accused examined DW-1 Gopal Krishan, Criminal Ahlmad, who brought the summoned record and proved the certified copy of complaint titled as 'Gursahib Singh vs. Amritpal Singh' under Section 138 of the Negotiable Instruments Act. DW-2 Rampal, Criminal Ahlmad, proved the certified copy of criminal titled as 'Raj Kumar vs. Sher Amir Singh and others' as Ex.DW2/A. He also brought on the record civil misc. application under Order 9 Rule 13 of CPC titled as 'Raj Kumar vs. Sher Amer Singh'.

Learned ACJM, Sri Muktsar Sahib, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 04.12.2015.

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 present case, a huge amount of ₹10 lakhs was given to the accused-firm on 25.02.2013 and the accused issued post-dated cheque dated 27.02.2013 on that very day. Nothing has been mentioned as to why this amount of ₹10 lakhs was taken for 1-2 days only. Secondly, there cannot be friendly relation of the firm with any person. Friendly relation of partner can be there and not of the firm. Furthermore, learned counsel for the applicant, admitted at the time of arguments that the applicant-complainant has only acquaintance with the accused. Nobody will lend ₹10 lakhs only there being acquaintance with the accused. No evidence has been produced to show that any partner is relative of the complainant or any partner has friendly relation with the complainant. There is no document on the record to show the loan transaction. Even if the firm has taken the loan, then there must be entry in the account books of the firm but no such record has been got summoned by the complainant to prove this fact. This fact is also not mentioned in the income tax return. There is no evidence on the record to show capacity of the complainant to lend such a huge amount.

Furthermore, at the time of evidence, the complainant stated that he borrowed ₹10 lakhs from one Subash Chand but Subash Chand has not been examined. Otherwise also, it looks improbable that a person would borrow ₹10 lakhs from another person to give the same to a person with whom he has no relation or friendly relation. Mere examination of Rajinder Singh is not sufficient to prove the lending of such a huge amount. The

who has obtained blank signed stamp papers and blank signed cheques from him as a security and the present complainant has relation with sons of Sher Amir Singh and after misusing the cheque given to Sher Amir Singh, present complaint has been filed. This defence version is probable one as it is admitted at the time of arguments that complainant stood witness in a case filed by Sher Amir Singh, which shows that the complainant is known to son of Sher Amir Singh. Otherwise also, this fact has not been denied at the time of arguments.

The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the accused has raised probable defence which is supported and corroborated from the case of the complainant and from the defence evidence. Therefore, the presumption has been duly rebutted by raising probable defence.

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 04.12.2015 passed by learned ACJM, Sri Muktsar Sahib, 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

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No