

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

CRM No.A-264-MA of 2016 (O&M)

Date of decision: November 10, 2017

Amarjit Singh

...Applicant

Versus

Sukhsimran Sidhu @ Sukhsimran Gill

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Manaise, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Amarjit Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sukhsimran Sidhu @ Sukhsimran Gill, challenging the impugned judgment dated 24.11.2015 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Amarjit Singh and sons filed a complaint against accused Sukhsimran Sidhu @ Sukhsimran Gill under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused in order to settle her brother in foreign country, approached

assistance of ₹5lakhs. The accused on 26.12.2009 took ₹5 lakhs in cash from complainant and executed a pronote in favour of the complainant. The accused also agreed to pay interest @ 18% per annum but she paid interest only for six months. On persistent demands of the complainant, the accused, in order to discharge her legally enforceable liability, issued two cheques bearing No.891221 dated 25.11.2010 and 891223 dated 23.12.2010, amounting to ₹2,50,000/- each in favour of the complainant, which on presentation for encashment, were returned back dishonoured with the remarks 'Account Closed'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

After the closure of complainant evidence, the accused was examined under Section 313 Cr.P.C. She denied all the allegations levelled against her and pleaded false implication. Accused also stated that Amarjit Singh along with her brother Amanpreet Singh and one Sukhwinder Singh has been running a finance company under the name and style of Chandan Finance Company. Her brother has handed over these cheques to Amarjit Singh. She further stated that alleged account was joint with her father and brother at that time and she was minor. Both these cheques are clear cut case of forgery and have been misused by the complainant. In defence, she examined herself as DW-1 besides five other witnesses. The accused denied any liability towards the complainant and also denied the issuance of the cheques.

Learned JMIC, Ludhiana, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 24.11.2015.

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.

Learned Magistrate after going through the record, found that accused executed one pronote Ex.C1 at the time of execution of the loan and held that the perusal of the pronote reveals that there is huge difference between signatures of the accused on the cheque as well as on the pronote. As per the allegations of the accused, the complainant forged the cheques and misused the same by filing the present complaint. DW-3 Ranbir Kumar Pahwa, deposed that account was opened in the year 1996 when accused was minor and was joint in name of father and brother of the accused. He has also stated that account was closed in 2006. This statement of DW-3 Ranbir Kumar Pahwa clearly shows that account was closed in the year 2006 and cheques are of 25.11.2010 and 23.12.2010 and pronote is stated to have been executed in 2009.

Further, the Court relied upon the fact that as per the complainant, the amount was taken by the accused for sending her brother to foreign country but as per evidence, brother of the accused had gone to foreign country on 18.08.2009 and came back on 25.08.2009, which means

that before taking the alleged amount, brother of the accused had already visited foreign country. The accused has also alleged that she moved a complaint against the complainant on 07.02.2011. An FIR was also got registered by the accused against the present complainant Amarjit Singh, Satwinder Singh and Amanpreet Singh, which further supports and corroborates the version of the accused.

Learned Magistrate further held that as per the record, the account was closed on 30.09.2006, then it looks improbable that after four years of the closing of the account, the person will issue the cheque of the closed account. Further, DW-3 Ranbir Kumar Pahwa has stated that Amarjit Singh is the director of M/s Chandan Finance Pvt. Ltd. and placed on record document Annexure AW3/1 bearing name Amarjit Dhillon as Director and nature of business is financing. DW-4 Jagdish Kumar brought the record in which name of Director is Amarjit Dhillon and Daljinder Kaur Dhillon and placed on record true copy of Ex.DW4/A. He also brought the latest annual report of 2014 regarding Chandan Finance Pvt. Ltd., which is Ex.DW4/B. Furthermore, there is no document on the record to show that loan transaction in question.

Keeping in view all these facts, I find that the defence raised by the accused is probable one and presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the case of the complainant as well as defence evidence.

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 24.11.2015 passed by learned JMIC, Ludhiana, 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.

November 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No