

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

CRM No.A-299-MA of 2016 (O&M)

Date of decision: March 15, 2017

Kumerjeet Singla

...Applicant

Versus

Narender Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arpandeep Narula, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Kumerjeet Singla has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Narender Kumar, challenging the judgment dated 05.01.2016 passed by learned Judicial Magistrate Ist Class, Sirsa, 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 further stated that learned trial Court, while acquitting the respondent, has acted contrary to law. The evidence on the record has not been appreciated at all. The impugned judgment has resulted in miscarriage of justice and is incorrect and is legally untenable. It is, therefore, prayed that leave to appeal be granted.

complaint against accused Narender Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused has friendly relation with the complainant and also visiting terms with him. In the month of October 2014, the accused was in dire need of money and to full his demand, the accused had borrowed a sum of ₹1 lakh from the complainant with the promise that the same shall be refunded. About two months later, the complainant demanded the amount of ₹1 lakh from the accused and in order to discharge his legal pre-existing liability, the accused had issued a cheque bearing No.918081 dated 02.12.2014 in favour of the complainant, which 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.

Learned JMIC, Sirsa, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 05.01.2016.

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.

Learned trial Court, from the evidence discussed that the

complainant admitted in the cross-examination that he does not know about

the relatives (mother, father, brother and sister) of the accused. He also admitted that accused is an unemployed person. He further admitted that he does not know the address of the accused. In view of this cross-examination, it is clear that the complainant has not friendly relations with the accused. The complainant also admitted the age gap between him and the accused. Otherwise also, it looks unnatural that ₹1 lakh was given by the complainant to a strange person, with whom he is having no relation or not knowing the address, without taking any receipt or any security document. There is no document on the record to show this loan transaction. There are no particulars that at which place, in whose presence and on which date, this amount has been paid. There is also nothing as to whether this amount was paid in cash or by way of cheque to the accused. There is nothing in the complaint whether this amount was at home with the complainant or withdrawn from any bank. It also looks unnatural that complainant given amount of ₹1 lakh without any receipt to a person who was not known to him. The complainant in the cross-examination then stated that accused is friend of his son-in-law which fact is not mentioned in the complaint. Rather, in the complaint, the complainant has stated that he has friendly relations with the accused. The accused has given the suggestion to the complainant that this complaint was filed at the behest of his son-in-law.

Further, the complainant admitted that he has filled up the cheque at the instance of the accused, who stated that he does not know how to fill the cheque. The Court below has disbelieved this fact also as the accused has signed on the cheque in English and he has the cheque book in his name, so it cannot be held that he does not know how to fill up the

cheque. Furthermore, no ground has been mentioned that why the date has

not been mentioned when the loan was given, it was written in October 2014. Learned trial Court relied upon the law laid down by the Hon'ble Supreme Court in *Vijay vs. Laxman, SC 2013(1) RCR (Civil) 980*, wherein it is held that no document or other material brought on record to prove loan transaction, date of demand of loan and giving of loan not stated in the complaint, it is fatal.

The perusal of the findings shows that the presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused from the case of the complainant itself by raising probable defence. From the perusal of the judgment passed by the Court below, I find 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 05.01.2016 passed by learned JMIC, Sirsa, 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 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No