

CRM-A-1235-MA-2015 (O & M)

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

CRM-A-1235-MA-2015 (O & M)
Date of Decision: 06.04.2017

Manohar Lal

... Applicant

Versus

Varun Kumar Verma

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Himanshu Raj, Advocate,
for the applicant.

INDERJIT SINGH, J.

CRM-23888-2015

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 08 days in filing the application seeking leave to appeal, is condoned.

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Applicant-Manohar Lal has filed this application under Section 378 (4) of the Code of Criminal Procedure, 1973 seeking permission for leave to appeal against respondent-Varun Kumar Verma challenging the impugned judgment dated 02.05.2015 passed by learned Judicial Magistrate Ist Class, Karnal, in Criminal Complaint No.487 of 2014, dated 17.04.2014, titled as 'Manohar Lal Vs. Varun Kumar

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Verma', under Sections 138 and 142 of the Negotiable Instruments Act, 1881, (for brevity, 'N.I.Act'), vide which the respondent-accused 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 the impugned judgment passed by learned Judicial Magistrate Ist Class, Karnal, acquitting the respondent is contrary to law and facts and, thus, the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

I have heard learned counsel for the applicant and gone through the record.

From the record, I find that applicant-complainant, Manohar Lal filed a complaint against respondent-Varun Kumar Verma under Sections 138 and 142 of the N.I.Act. As per the case of the complainant, the accused was serving in FCI Department and retired on 30.10.2012. The complainant and accused were having friendly relations with each other. The accused approached the complainant to purchase a property in his name at some suitable and good place at Karnal. Acceding to his request, the complainant gave an amount of ₹15,00,000/- to the accused, but he neither purchased any property nor repaid the amount and postponed the matter on one pretext or the other. In order to discharge his existing liability towards the complainant, the accused issued three cheques bearing Nos.059445, 175124 and 175115 dated 16.10.2012, 30.11.2013 and 22.01.2014, amounting to ₹20,000/- each drawn at

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Central Bank of India, Branch Chaura Bazar, Axis Bank and Canal Bank Ltd., Karnal, respectively, in favour of the complainant. When these cheques were presented for encashment, the same were returned back with the remarks "Insufficient Funds". A panchayat was convened in this regard and the accused gave an amount of ₹1,60,000/- and again issued cheque Nos.179361, 175117 and 175116 dated 10.03.2014, 22.01.2014 and 28.02.2014, amounting to ₹13,00,000/-, ₹20,000/- and ₹20,000/-, drawn at Axis Bank Ltd., Karnal, respectively, in favour of the complainant and he requested to present the said cheques after 10.03.2014, which on presentation for encashment were received back with the remarks "Funds Insufficient". Thereafter, legal notice was issued to the accused and when the payment was not made within the stipulated period, the complainant filed the complaint.

Learned Judicial Magistrate Ist Class, Karnal, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 02.05.2015.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

After hearing learned counsel for the applicant and after going through the record, especially the impugned judgment passed by the trial Court, I find that the findings given by learned Magistrate are correct, as per evidence and law. Learned Magistrate has appreciated the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence. At the time of arguments, nothing has

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been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

Perusal of the record shows that complainant is 62 years old whereas age of accused is 26-27 years, which means that version of the complainant that he is having friendly relations with the accused, looks unnatural. Secondly, it is in the evidence that the complainant is a property dealer and as to why he had given ₹15 lacs in lump-sum to the accused for purchasing the property without any receipt or obtaining any security document. Everybody knows that firstly, an agreement is to be executed and a small amount as earnest money is to be paid and then the remaining amount of sale consideration is to be paid at the time of execution of the sale deed. Furthermore, the property is to be identified and is to be shown to the purchaser and only then further talks take place and some amount is given. Therefore, version of the complainant that ₹15 lakhs were given to the accused for purchasing the property, is totally unnatural and the same cannot be believed especially when the complainant himself is a property dealer. There is no record of any type to show this transaction. Complainant in his statement stated that he knew the accused for the last 4-5 years, but he cannot tell as to how he knew him. The complainant also stated that he took approximately ₹7 lakhs from his Commission Agent namely Anil Kumar, but the said commission agent has not been examined. The complainant admitted in his cross-examination that he gave money to the father of accused who gave the cheques in dispute to the complainant which means that the

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cheques in question are not given by the accused to the complainant. This is a material contradiction and change of version while appearing in the Court by the complainant which falsifies his total case.

Keeping in view the above facts, I find that the presumption under Section 139 of N.I.Act has been duly rebutted in view of cross-examination of the complainant. From the above discussion, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) Cr.P.C., the same is dismissed.

06.04.2017
parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No