

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

**CRM No.A-119-MA of 2014 (O&M)
Date of decision: December 13, 2017**

Vikas Sharma

...Applicant

Versus

Niranjan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Gourav Jain, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Vikas Sharma has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Niranjan Singh, challenging the impugned judgment dated 14.11.2013 passed by learned Judicial Magistrate Ist Class, Hisar, 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 Vikas Sharma filed a complaint against accused Niranjan Singh under Section 138/141 of the Negotiable Instruments Act. As per complainant's version, accused

requested him to purchase his agricultural land measuring 7 kanals 13

marlas and an agreement dated 08.11.2007 was executed between the complainant and the accused. The accused agreed to sell his land for a sale consideration of ₹8,50,000/- per acre and ₹4,50,000/- was paid as earnest money. On 10.04.2008, the complainant had gone to the office of Sub Registrar with the balance amount of sale consideration but the accused did not appear and after waiting for the accused, the complainant got his presence marked by getting an affidavit attested by the competent authority. As per the agreement, in case, if accused failed to get the sale deed registered in favour of the complainant, the accused was liable to pay an amount of ₹9 lakhs to the complainant. In order to discharge the existing liability, the accused had issued a cheque bearing No.0083585 dated 18.05.2008 for an amount of ₹9 lakhs in favour of the complainant, which on presentation for encashment was returned back dishonoured with the remarks 'insufficient funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant proved documents i.e. agreement, cheque, bank memo, copy of decree sheet etc. At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he denied the incriminating evidence against him.

In defence, accused examined DW-1 Sukhvinder Singh, DW-2 Sandeep, DW-3 Parmod Jain, DW-4 Amrish Kumar, DW-5 Dr.Inderjeet Singh, DW-6 Joginder Singh, DW-7 Kuldeep Sharma and DW-8 Sukhwant Singh and also tendered documents Ex.D1 to Ex.D22.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 14.11.2013.

Aggrieved from the above-said judgment, present appeal along

with application for grant of leave to appeal has been filed.

Notice of the application was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties 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 held that the liability took birth from the execution of the agreement to sell Ex.P1. The cheque in question was drawn by the accused. The Court held that under the name of the accused, there is a thumb impression, which shows that the accused is an illiterate person. The complainant is a well educated person. The Court below found that the accused has only received ₹4,50,000/- as earnest money and there is dispute regarding performance of the agreement and ₹9 lakhs is to be paid as penalty. At that time, the cheque in question has not been paid to satisfy the decree of the civil Court. No person will pay double amount of earnest money by treating it as penalty at its own, when it was not determined by any competent authority. At the time of arguments, it has been brought to the notice of this Court that complainant filed a suit for recovery of ₹9 lakhs, which was decreed by the Civil Court. An appeal was filed by the

accused, which is stated to be allowed by the lower Appellate Court and

RSA against the judgment passed in the appeal, is pending before this Court. This fact also shows that when the accused is contesting the civil suit, then why he himself will pay double the amount of the earnest money.

Learned Magistrate also discussed the evidence in detail i.e. discrepancies in the statements of the witnesses. The Court below also held that two different versions have come on the file about the source of ₹4.5 lakhs allegedly given to the accused. The accused has denied the agreement to sell and his version is that, being an illiterate person, his thumb impression was obtained on blank papers etc. The Court also held that it is highly improbable that a person will opt to pay ₹9 lakhs in such type of circumstances. Learned Magistrate has minutely discussed the discrepancies in the statements of PW-1 Vikas Sharma and PW-2 Vivek Sharma.

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 14.11.2013 passed by learned JMIC, Hisar, 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.

December 13, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No