

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

CRM No.A-1231-MA of 2014 (O&M)

Date of decision: August 03, 2017

Parveen Kumar

...Applicant

Versus

Chand Chhabra and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harsh Aggarwal, Advocate
for the applicant.

Mr.Vikramvir Sharda, Advocate
for respondent No.1.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Applicant-Parveen Kumar has filed this application under Section 378(4) seeking permission for leave to appeal against respondents Chand Chhabra and State of Punjab, challenging the judgment dated 21.05.2014 passed by learned Addl. Sessions Judge, Jalandhar, vide which the appeal filed by the accused-respondent against the judgment of conviction and order of sentence dated 23.01.2012 passed by learned JMJC, Jalandhar, was set aside and 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 Parveen Kumar filed a complaint against accused Chand Chhabra under Section 138 of the Negotiable Instruments Act (for brevity 'the Act'). As per complainant's version, accused approached him with a request to advance a sum of ₹1,50,000/- in the month of September 2010 as he was to make the arrangements for the marriage of his son. The complainant being in friendly relations with the accused, advanced the said amount of ₹1,50,000/- to the accused, who promised to return the same in the month of October 2010 and in order to discharge his financial & legally enforceable debt, accused issued cheque No.075353 dated 15.10.2010 for ₹1,50,000/-, in favour of the complainant, which on presentation for encashment, was returned back dishonoured, with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused in the statement under Section 313 Cr.P.C., pleaded that a false case has been planted upon him. In defence, accused examined DW-1 Manoj Kumar, who stated that he knew Chand Chhabra and Mohinder Kala and there is no business dealing or thick family relations between the accused and the complainant. Accused Chand Chhabra having friendly relations with Mohinder Kala, took a loan from Mohinder Kala and in his presence, accused gave cheque No.075353 to said Mohinder Kala as security for the repayment of the loan. The said loan was repaid by accused to Mohinder Kala. This witness further stated that the cheque in question was being misused by the complainant after receiving the same from Mohinder Kala and he is blackmailing the accused under the garb of said

Learned JMIC, Jalandhar, after appreciating the evidence, convicted and sentenced the accused-respondent to undergo rigorous imprisonment for a period of two years and to pay fine of ₹2000/- and in default of payment of fine, to undergo simple imprisonment for a period of 15 days under Section 138 of the Act. An appeal was filed by the accused-respondent and learned Addl. Sessions Judge, Jalandhar, vide impugned judgment dated 21.05.2014 accepted the same and acquitted the accused-respondent.

Aggrieved from the above-said judgment dated 21.05.2014, present appeal along with application for grant of leave to appeal has been filed.

Notice of motion was issued. Learned counsel for respondent No.1 as well as learned State counsel appeared and contested the application.

Lower Court record was requisitioned.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the findings given by learned trial Court 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 learned lower Appellate Court. Nothing has been pointed out as to what illegality has been committed by learned Addl. Sessions Judge, Jalandhar, while acquitting the accused-respondent.

It is settled law that accused can rebut the presumption under

Section 139 of the Act by raising probable defence, which can be supported or corroborated even by the case of the complainant. The perusal of the record shows that complaint was filed on 01.12.2010 and loan amount of ₹1,50,000/- was given in September 2010 but no date has been mentioned as to when the amount was given. Even in the cross-examination, the complainant was not sure about the date. Secondly, no security document has been taken from the accused at the time of advancing the loan of ₹1,50,000/-. Furthermore, no document of any type has been produced on the record to show this transaction. No particulars have been mentioned that on which date and in whose presence the loan was given. As per the complainant's version in the cross-examination, this amount was paid on the road near the railway crossing, which looks unnatural. If the complainant and accused have friendly relations and the amount is given without taking any security document, then it can be given either at the house of the accused or at the house of the complainant.

Furthermore, the complainant stated that he has friendly relations with the accused but he does not know as to when the marriage of son of the accused has taken place, in which marriage palace nor he attended the marriage, which shows that the accused has no close friendly relations with the complainant. Moreover, the accused has produced on record the statement of account of the complainant from 01.01.2010 to 02.08.2012. The balance during the period 06.02.2010 to 23.10.2010 was less than ₹27,000/-, which further shows that the complainant was not having capacity to pay huge amount of ₹1,50,000/- to the accused.

Further, the evidence on record shows that complainant and

terms with the accused. He was only knowing him from the last 2-3 years. The complainant in the evidence stated that cheque Ex.C1 does not bear his handwriting. He does not know whether handwriting on the cheque is of the accused. He cannot tell which date was put by the accused on the cheque. I have also seen the original cheque. The signatures and body of the cheque look to be in different inks.

The perusal of the judgment passed by learned lower Appellate Court shows that the findings have been given correctly by appreciating the evidence in right perspective. In no way, the impugned judgment can be held as perverse or against the evidence. The accused has raised probable defence, which is supported and corroborated by the case of the complainant and defence evidence. The presumption under Section 139 of the Act has been duly rebutted by raising probable defence.

In view of the above discussion, I find that the impugned judgment dated 21.05.2014 passed by learned Addl. Sessions Judge, Jalandhar, 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.

August 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No