

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

CRM No.A-1379-MA of 2015 (O&M)

Date of decision: May 19, 2017

Satwinder Singh

...Applicant

Versus

Sewa

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sirpikhi, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Satwinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sewa, challenging the judgment dated 05.06.2015 passed by learned Judicial Magistrate Ist Class, Batala, 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Satwinder Singh filed a complaint against accused Sewa under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused borrowed a sum of ₹1,71,000/- from the complainant for enhancement of his business and in

lieu of that, the accused has drawn a cheque bearing No.367883 dated

18.12.2012 for ₹1,71,000/-, in discharge of his liability towards 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.

The case of the accused before the Magistrate is that complainant is a financier and he got the licence of finance company in the year 2010. This fact has not been mentioned by the complainant in his affidavit Ex.CW1/A. It is further stated that 2-3 cases are also pending against other persons. He further stated that signature on the cheque is in Punjabi and remaining cheque is filled in English language. The accused also examined DW-1 Kashmir Singh, who stated that there was dispute between the parties for the amount of ₹29,000/- and on 15.11.2011, accused had returned ₹20,000/- to the complainant and on 08.12.2012, accused also returned ₹7000/- to the complainant as per agreement. DW-2 Shinda Lal, also deposed the same facts. He also stated that the agreement was witnessed by the witnesses and when they came present at police station, accused had not told about the matter in dispute nor the SHO told about this. DW-3 Sewa Ram also stated that he along with Rakha Ram, Darshan Lal, Shinda Lal, Kashmir Singh Sarpanch and Hazara Singh went to police station and complainant was already present there and accused gave ₹20,000/- to the complainant on that day. He further admitted that agreement was scribed on simple paper. It is the case of the accused that he has returned the entire amount to the complainant.

Learned JMIC, Batala, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide

impugned judgment dated 05.06.2015.

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 the findings have been given as per evidence and law. Nothing has been argued 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 given by the Court below are perverse or against the evidence or law. The findings have been given after appreciating the evidence in right perspective.

Learned Magistrate held that copy of the agreement dated 12.11.2012 has been placed on record which shows that matter in dispute was settled between the parties for amount of ₹29,000/- and ₹20,000/- was paid to the complainant. The complainant admitted in his cross-examination that he is a financier and he has got the licence of Finance Company in the year 2010.

The perusal of the record shows that complainant has not produced any document on record to show this loan transaction. Neither income tax return nor any account books have been produced to show the transaction. If the complainant is a financier and in view of the evidence, 3-4 cases are already pending in the Court, therefore, there must be some record with the complainant to prove the transaction. The accused has raised probable defence, which is supported by the DWs as stated above.

Though the agreement has not been proved on record as per law, but the

also corroborated from the fact that cheque is signed in Punjabi and filled by some other person of complainant side. By raising probable defence, which is supported and corroborated by the cross-examination of the complainant's witnesses and by the defence witnesses, I find that presumption has been duly rebutted by the accused.

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 05.06.2015 passed by learned JMIC, Batala, 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.

May 19, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No