

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

CRM No.A-1378-MA of 2014 (O&M)

Date of decision: September 26, 2017

Ranbir Singh and another

...Applicants

Versus

Umed Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jitender Nara, Advocate
for the applicant.

Mr.Banni Thomas, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicants-Ranbir Singh and Amrit Kaur have filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Umed Singh, challenging the impugned judgment dated 30.03.2013 passed by learned Judicial Magistrate Ist Class, Bahadurgarh, 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 complainants Ranbir Singh and Amrit Kaur filed a complaint against accused Umed Singh under Section 138 of the Negotiable Instruments Act. As per complainants' version, in the month

of January 2009, the accused was in need of ₹10,20,000/- for his domestic purposes. He requested the complainants to give a sum of ₹10,20,000/- and complainants paid the said amount to the accused on interest at the rate of 1% per month. After several requests, the accused in order to discharge his legally enforceable liability to repay the aforesaid loan amount, issued cheque bearing No.519890 dated 24.04.2009 for ₹10,20,000/-, which on presentation for encashment was returned back with the remarks 'account closed'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In the statement under Section 313 Cr.P.C., the accused took the plea that no cheque was issued by him to the complainants Amrit Kaur and Ranbir but the cheque No.519890 was given by him as a security which has been misused by the complainants. In defence, accused examined DW-1 Krishan, DW-2 Prem Kanwar and examined himself as DW-3.

Learned JMIC, Bahadurgarh, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 30.03.2013.

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

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.

From the record, first of all, I find that huge amount of ₹10,20,000/- was given by the complainants to the accused but no security document has been taken nor even receipt was taken from the accused. Even the date has not been mentioned as to when this amount has been given. There is no document on the record to show this loan transaction. There is also no evidence of withdrawing the amount from the bank etc. It is admitted at the time of arguments that Krishan Kumar is close relative of the complainants. The agreement to sell has been placed on the record which shows that there was some agreement or dealing regarding purchase of property etc. between the parties. I have gone through the document Ex.D1 which has been duly proved. In this agreement dated 29.06.2010, it is specifically written that the cheques given by Umed Singh (present accused) to Amrit Kaur, will be treated as cancelled and on the basis of those cheques, Amrit Kaur will not pursue any proceedings. This agreement was duly signed by Krishan Kumar. This document further supports the defence version.

Furthermore, if the loan was given on 1% interest, then there should be some pronote or any written document to show this loan transaction. The accused has raised probable defence, which is duly supported and corroborated by the statements of the complainants as well as defence evidence. Otherwise also, if some dealing regarding purchase of

property is already going on between the parties, then there is no question of

lending huge amount of ₹10,20,000/- without obtaining any document. Moreover, the cheque is stated to have been issued in the year 2009 whereas the account has already been closed about two years back to the issuance of the cheque. It is also in the evidence that complainants were not knowing Umed Singh. Rather, he was introduced by Krishan Kumar in the year 2008 when they sold the house in the year 2008. No ordinary person would lend ₹10,20,000/- without any document to a person with whom he has no acquaintance and also when that person is introduced by some relative. All these facts show that the defence raised by the accused is probable one. Therefore, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

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 30.03.2013 passed by learned JMIC, Bahadurgarh, 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.

September 26, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No