# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM No.A-1425-MA of 2014 (O&M)**
**Date of decision: February 21, 2017**

Naresh Kumar

...Applicant

Versus

Pardeep Kumar

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Radhe Shyam Sharma, Advocate
for the applicant.

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**INDERJIT SINGH, J.**

Applicant-Naresh Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Pardeep Kumar, challenging the judgment dated 02.08.2014 passed by learned Judicial Magistrate Ist Class, Hisar, whereby the accused-respondent was acquitted.

It is mainly stated in the application that balance of convenience lies in favour of the present applicant and the applicant has a good case on merits. It is, therefore, prayed that leave to file appeal be granted to the applicant.

As per the record, the complainant Naresh Kumar filed complaint against accused Pardeep Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had approached the complainant for advancing a loan of ₹18 lakhs for his business purpose. The accused in discharge of his outstanding liabilities, issued a cheque bearing No.826913 dated 11.01.2011 for a sum of ₹18 lakhs in favour of the complainant, which on presentation for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was issued. The accused sent reply through his counsel that the cheque was only for an amount of ₹1000/-. When the amount was not paid, then the complaint was filed well within time.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 02.08.2014.

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

First of all, the perusal of the record shows that no date, month and year has been mentioned in the complaint as to when the loan was given. If the amount was given for the business purposes, then it looks unnatural that there were no terms and conditions to pay the interest. Furthermore, no receipt or security document has been obtained at the time of advancing such a huge amount. No document has been placed on the record by the complainant to show this loan transaction. ₹18 lakhs is huge amount. Nothing is there on the record to show that from where this amount has been given. No particulars of loan transactions have been mentioned by stating that at which place and in whose presence this amount was given. Furthermore, there is also no particular as to when the loan was demanded back.

Keeping in view the above facts and in view of the judgment passed in ***Vijay vs. Laxman and another, 2013(1) RCR (Cri) 1028 (SC)***, the accused is entitled to acquittal on these grounds. Learned Magistrate has discussed the law on this point also.

Furthermore, in the complaint it is written that complainant is a property dealer but when he appeared as a witness, he stated that he is not a property dealer and not having any licence of property dealership. The Court held that it is totally contradictory. Moreover, the complainant has stated that he is not filing any income tax returns.

Learned Magistrate also discussed the statements of accounts of the complainant as well as of accused. The Court below held that complainant himself was under debt as he admitted that he sold his land on which loan was taken. The Court further held that in order to prove the financial capacity of the complainant, the accused has placed on record account statement of the complainant Ex.D2, which shows that the complainant was not having that much sufficient amount in his account to advance it to the accused. It is further held by learned Magistrate that accused, to show that he was in better financial position, placed on record his account statement Ex.D6, which shows heavy amount lying in the account of the accused.

Learned trial Court also held that the amount which was advanced as loan was not withdrawn from any account and this amount was lying with him as stated by the complainant. It is also discussed that the cheque belongs to the cheque book issued in the year 2007 whereas, another cheque book was issued to the accused on 06.03.2010 and the Court held that why the accused would issue cheque in the year 2011 from the old cheque book. It is also found that accused issued cheque No.901 to 925 on 10.09.2007. Learned Magistrate further held that there is difference of handwriting in the body of the cheque and signatures.

Keeping in view the above evidence, learned trial Court held that presumption under Section 139 of the Negotiable Instruments Act has been duly proved by raising probable defence by the accused.

In view of the above discussion, I find that the impugned judgment dated 02.08.2014 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 application stand dismissed.

**February 21, 2017** **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**