

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

CRM No.A-730-MA of 2016 (O&M)

Date of decision: February 08, 2017

Anil Kumar

...Applicant

Versus

Yoginder Singh @ Joginder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Sunita Nambiar, Advocate for
Mr.Balkar Singh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Anil Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Yoginder Singh @ Joginder Singh, challenging the impugned judgment dated 01.02.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 further stated that the impugned judgment dated 01.02.2016 passed by learned JMIC, Yamuna Nagar at Jagadhri is against the facts and circumstances of the case and the respondent has been acquitted without appreciating the evidence available on record. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Anil Kumar filed a complaint against accused Yoginder Singh alias Joginder Singh under Section 138 of the Negotiable Instruments Act. As per the complainant's case, in discharge of his existing liability towards the complainant, the accused had issued a cheque bearing No.140784 dated 25.12.2012 in the sum of ₹7 lakhs, 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.

Learned JMIC, Yamuna Nagar at Jagadhri after appreciating the evidence, acquitted the accused-respondent.

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

After hearing learned counsel for the applicant and after going through the record, especially the judgment passed by learned JMIC, Yamuna Nagar at Jagadhri, I find that the findings have been given by learned Magistrate while appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence. 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 illegal or against the law.

The perusal of the record shows that in the complaint, no date, month and year has been mentioned as to when the liability came into existence. There is no particular of existing liability and how it arose. Nothing has been mentioned that in whose presence the amount was given

mentioned. There is no document on the record to prove the loan transaction.

In cross-examination, the complainant stated that he had advanced the friendly loan to the accused but in further cross-examination, he stated that the liability arose on account of selling timbers standing in his fields to the accused. No document of any type regarding khasra girdawari or any other document for selling the timbers was produced on the record. It has also come into the evidence that the complainant did not had any prior relationship with the accused. The complainant has stated that the accused met him by chance since the accused was a commission agent in the timber market. It looks improbable that a person will give the loan or sell the timber of such a huge amount without taking any document and will not maintain any record.

Neither any particulars have been mentioned nor any document is there to show the loan transaction. No date, month and year has been mentioned by the complainant as to when he gave the loan. This evidence rebuts the presumption under Section 139 of the Negotiable Instruments Act.

Furthermore, the defence of the accused is that he has dealings with Zamindara Timbers and has given blank signed cheques to them. The present complainant connived with Zamindara Timbers. The accused has also produced the copy of the judgment Ex.DA passed in complaint filed by Kuldeep Singh regarding another cheque bearing No.140783 dated 20.09.2010, in which case, the accused had taken the same defence. The cheque in the present case is bearing No.140784 but the date is filled up as

bearing No.140783 which was given on 20.09.2010.

In view of the above discussion, I find that the impugned judgment dated 01.02.2016 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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.

February 08, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No