

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

CRM No.A-1588-MA of 2014 (O&M)

Date of decision: February 08, 2017

Girish Kumar

...Applicant

Versus

Ramotar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Akashdeep Singh, Advocate
for the applicant.

Ms.Bhagyashri, Advocate for
Mr.Vinod S. Bhardwaj, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Girish Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ramotar, challenging the impugned judgment dated 22.08.2012 passed by learned Judicial Magistrate Ist Class, Narnaul, 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 judgment dated 22.08.2012 passed by learned JMIC, Narnaul, is liable to be set aside being not sustainable in the eyes of law. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Girish Kumar filed a complaint against accused Ramotar under Section 138/142 of the Negotiable Instruments Act. As per the complainant's case, accused was in friendly terms with him and was in urgent need of money for some property purpose. The complainant advanced a loan of ₹3 lakhs to the accused on 15/16.04.2008. To discharge his liability, the accused issued a cheque bearing No.040906 dated 20.08.2008 for a consideration of ₹3 lacs, 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, Narnaul, 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.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the application.

I have heard learned counsel for the parties and have gone through the record, especially the judgment passed by learned JMIC, Narnaul.

From the record, first of all, I find that the evidence has been appreciated in right perspective by learned Magistrate. 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.

Learned trial Court held that the complainant as PW-5 in his

cross-examination stated that accused took a loan of ₹3 lacs from him to purchase some land etc. but in his complaint, he nowhere stated the fact that for what purpose, the accused borrowed the huge amount. The complainant in his complaint as well as in his affidavit has nowhere stated the date of giving the loan to the accused. Rather, in cross-examination, he stated that the loan was given to the accused on 15/16.04.2008, which shows that he even did not remember the exact date of transaction.

As per version of the complainant, the accused is his neighbour and having friendly relations but in his cross-examination, he admitted that he did not know whether father of the accused was alive or not. He further stated that he even did not know as to how many brothers he has. In these circumstances, learned Magistrate held that the complainant had lent money to the accused without any surety and document qua the transaction. All these facts are sufficient to highlight the whole version of the complainant's claim of friendly relations with the accused.

The Court further held that there is no document on record to show the loan transaction. The complainant stated that he has borrowed ₹75,000/- from his mother but he has also not examined his mother. Learned Magistrate also held that even the amount of more than ₹20,000/- cannot be given as per Section 269 ss of the Income Tax Act without negotiable instrument. The perusal of the record shows that no document of any type has been placed on the record to prove the loan transaction. Furthermore, the accused has led the probable defence to rebut the version of the complainant.

In view of the above discussion, I find that the impugned

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