

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

CRM No.A-805-MA of 2016 (O&M)

Date of decision: August 16, 2017

Pawan Kumar

...Applicant

Versus

Rajender Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajesh Bansal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Pawan Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Rajender Kumar, challenging the impugned judgment dated 25.02.2016 passed by learned Sub Divisional Judicial Magistrate, Gulha, 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 complainant Pawan Kumar filed a complaint against accused Rajender Kumar under Sections 138/142 of the Negotiable Instruments Act read with Section 420 IPC. As per complainant's version, the accused borrowed a sum of ₹2 lakhs from him in

cash on 01.05.2013 with a promise to pay back the said borrowed amount

upto September 2013. In discharge of his existing and legally enforceable liabilities, the accused issued cheque No.401511 dated 02.10.2013 for ₹2 lakhs in favour of the complainant, which on presentation for encashment, was returned back dishonoured, with the remarks 'payment stopped by drawer'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In defence, accused examined DW-1 R.V.Vashishtha, Handwriting and Fingerprints expert, who in his report Ex.DW1/B has opined that questioned signatures on Mark Q1 on the writing dated 16.05.2013 have been signed by same person who has signed standard signatures i.e. complainant himself.

Learned SDJM, Gulha, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 25.02.2016.

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 these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. 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 perverse or against the law and what illegality has been committed by learned Court below.

is that in fact, he had given six blank cheques to the complainant as security in lieu of the dealings between them and the complainant had also rented out one portion out of his building to the accused and on 16.05.2013, a writing was executed by complainant himself wherein he has mentioned that nothing is due towards the accused and accordingly he returned three blank cheques to the accused and the remaining three cheques remained with the complainant as the same were not found by him and it was agreed that the same would be returned to the accused and writing would be taken back by him. It is also the case of the accused that brother of complainant Rajpal has also filed another complaint qua different cheque number which have been got mentioned in the said writing and as such the complainant has misused the blank cheques which were accordingly given as security to complainant by him.

At the time of arguments before this Court, it is admitted that portion of his building has been given on rent to the accused by the complainant, which means it corroborates the defence version. Similarly, accused has proved the writing Mark D1, which further supports and corroborates the version of the accused. This writing is signed by Pawan Kumar complainant. At the time of arguments before this Court, learned counsel for the applicant argued that some blank signed papers have been misused by the accused but he has failed to explain as to how those blank papers signed by the complainant came in the hands of the accused. Another complaint filed by the brother of the complainant against the accused, also supports the version of the accused.

To rebut the presumption under Section 139 of the Negotiable

case, the accused has raised probable defence, which is supported and corroborated by the case of the complainant as well as by the defence evidence. Therefore, the presumption 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 25.02.2016 passed by learned SDJM, Gulha, 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.

August 16, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No