

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

CRM No.A-1703-MA of 2014 (O&M)

Date of decision: March 27, 2017

Ashok Kashwan

...Applicant

Versus

Gopal Krishan Rawat

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikas P. Singh, Advocate
for the applicant.

Mr.Narender Kajla, Advocate
for the respondent.

INDERJIT SINGH, J.

CRM No.33923 of 2014

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 199 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-1703-MA of 2014

Applicant-Ashok Kashwan has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Gopal Krishan Rawat, challenging the impugned judgment dated 01.02.2014 passed by learned Judicial Magistrate Ist Class, Hisar, 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 learned trial Court has acquitted the respondent illegally and arbitrarily without appreciating the facts in proper perspective. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Ashok Kashwan filed a complaint against accused Gopal Krishan Rawat under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused has good relation with the complainant being friend and in the first week of May, in the presence of Attar Singh, accused borrowed friendly loan of ₹2,80,000/- on the assurance that he will repay the same very soon. On demand, the accused issued cheque bearing No.832445 dated 10.07.2004 for ₹2,40,000/- and cheque bearing No.832446 dated 28.07.2004 of ₹40,000/-, in favour of the complainant, which on presentation for encashment, were returned back dishonoured, with the remarks 'Insufficient Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Hisar after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 01.02.2014.

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.

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.

The perusal of the record shows that no particulars qua date and year have been mentioned in the complaint. It is simply stated that in the first week of May, ₹2,80,000 was given to the accused. Secondly, there is no document on the record to support this loan transaction. It is stated in the complaint that loan was given in the presence of Attar Singh but Attar Singh has not been examined. No security document of any type was taken from the accused at the time of advancing the loan of ₹2,80,000/-. There is also no cogent evidence on record to show such a close relation between the parties to give the money without getting any security document. The defence of the accused is that in fact the cheques in question were missing and the same have been misused by the complainant in the present case. The complainant was a student at the alleged time of advancement of loan and has no capacity to pay such a huge amount.

Learned trial Court found that firstly in the complaint, it is stated that in the first week of May amount has been given without mentioning the date and year in which the loan was given. When the complainant came to the witness box, he stated that the loan was given in the first week of May 2004. Later on the complainant stated that he had advanced the cash amount of ₹2,80,000/- to the accused at Hisar in the first

sworn affidavit and in the cross-examination of the complainant.

The accused has taken the defence that he never obtained any loan from the complainant and his blank signed cheque had been stolen which has been misused in the present case. Only on the mere fact that DDR has not been got registered by the accused, he cannot be convicted for offence under Section 138 of the Negotiable Instruments Act. It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted even from the case of the complainant. Admittedly, the complainant was a student till 2005. Nothing has been shown from where he was earning and advanced such an huge amount of ₹2,80,000/-. The capacity to lend such an huge amount has also not been shown by leading cogent evidence.

Furthermore, the complainant stated in his evidence that he borrowed some amount from his relative but none of the relative has been examined to prove this fact. The Court below relied upon the law and found that presumption under Section 139 of the Negotiable Instruments Act has been rebutted and held that there is nothing on the record to show that this transaction has taken place between the parties and only on the ground of presumption, the accused cannot be convicted. Rather, the Court held that from the case of the complainant itself, the presumption has been rebutted.

From the perusal of the judgment passed by the Court below, I find 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

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.

March 27, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No