

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

CRM No.A-1729-MA of 2014 (O&M)

Date of decision: September 27, 2017

Tejinder Bansal

...Applicant

Versus

Veer Singh alias Gurmail Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Malwai, Advocate
for the applicant.

Mr.K.S.Sekhon, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Tejinder Bansal has filed this application under Section 378(4) &(5) Cr.P.C. seeking permission for leave to appeal against respondent Veer Singh alias Gurmail Singh, challenging the impugned judgment dated 05.09.2014 passed by learned Judicial Magistrate Ist Class, Sri Muktsar Sahib, 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 Tejinder Bansal filed a complaint against accused Veer Singh alias Gurmail Singh under Section 138 of the Negotiable Instruments Act. As per complainants' version, he

runs the business of commission agency and accused used to take loan time to time as per his need. On 16.05.2011, in discharge of his liability of repayment of loan taken by accused at different times from the complainant, accused issued cheque No.525738 dated 16.05.2011 amounting to ₹9,20,000/- in favour of the complainant, which on presentation for encashment was returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In defence, accused examined DW-1 Rajwinder Singh and DW-2 Sunil Tiwari.

Learned JMIC, Sri Muktsar Sahib, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 05.09.2014.

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 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.

From the record, I find that during cross-examination CW-1

signatures of accused Veer Singh are only on documents Ex.C15 to C17, C20, C34 and C35 and most of the entries are by Surinderjit Singh who happens to be the son of the accused. The trial Court further held that it is the same version of CW-2 Tejinder Bansal complainant during his cross-examination. He also admitted that maximum entries are in the name of Surinderjit Singh and no written authority has been given by Veer Singh to Surinderjit Singh to take money from them. Complainant Tejinder Bansal further admitted that there is one brother of accused Veer Singh whose name is Gurmail Singh. Learned Magistrate held that this fact further differentiate the case of Veer Singh from Gurmail Singh. The entries in Bahis, Rokar etc. whereby accused Veer Singh has been mentioned as Veer Singh alias Gurmail Singh do not appear to be correct. If Veer Singh has already closed the account which is alleged by the complainant, then issuing of cheque to discharge his legal liability does not arise.

Learned Magistrate also held that if all the entries on which accused Veer Singh had signed are counted, the total amount will not come to ₹9,20,000/- and it would be much less than this amount. In defence, accused has examined Ex-sarpanch Rajwinder Singh, who deposed that son of the accused namely Surinderjit Singh is residing separately for the last 4-5 years from the accused. In the cross-examination he also stated that Veer Singh is cultivating his land of 5-7 acres after taking it on lease.

The defence of the accused that he has already closed the account and has not taken money, is supported and corroborated from the case of the complainant himself. The defence of the accused is probable one. The loan has been taken by the son of the accused as well as his

brother and only on 5-6 documents, there are signatures of present accused.

The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused.

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 05.09.2014 passed by learned JMIC, Sri Muktsar Sahib, 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.

September 27, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No