

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

CRM-A-1909-MA of 2014.

Decided on:-10.11.2017.

Dhara Singh.

.....Applicant.

Versus

Ramesh.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Arvind Chauhan, Advocate
for the applicant.

HARI PAL VERMA, J.

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal, against the judgment dated 06.10.2014 passed by learned Judicial Magistrate 1st Class, Jind, whereby the respondent was acquitted of the charge framed against him in a criminal complaint filed against him under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act).

Briefly stated, it is the case of the applicant-complainant that the respondent-accused in discharge of his legal and financial liability had issued a cheque bearing No.369009 dated 29.04.2011 amounting to Rs.1,00,000/- drawn on State Bank of Patiala, Jind in favour of the applicant. The said cheque when presented by the applicant for encashment with his banker, was dishonoured with the remarks "insufficient funds" vide memo dated 01.06.2011. Thereafter, the applicant served a legal notice to the respondent

on 03.06.2011 requesting him to make the payment of the cheque in dispute, but the respondent failed to do so. Hence, the complaint.

After recording the preliminary evidence, the trial Court vide order dated 20.07.2011 summoned the accused to face the trial. Finding a prima facie case, vide order dated 28.11.2011, respondent-accused was served with the notice of accusation under Section 138 of the Act, to which he did not plead guilty and claimed trial.

After considering the evidence produced on record and hearing arguments of both the sides, learned trial Court vide judgment dated 06.10.2014 acquitted the respondent of the charge framed against him.

Aggrieved against the aforesaid judgment dated 06.10.2014, the applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the applicant-complainant has argued that the trial Court while acquitting the respondent has failed to appreciate the oral as well as documentary evidence produced by the applicant. The findings returned by learned trial Court are based upon surmises and conjectures and are result of non-appreciation of facts and circumstances of the case. The respondent has taken a plea that the cheque in question was stolen by the applicant as he frequently used to come to the shop of the respondent, but the respondent has failed to prove said defence by leading any cogent evidence. Neither any FIR was got registered nor any complaint was filed by the respondent with regard to the theft of the cheque in question.

He has further contended that the respondent has not led any evidence to rebut the presumption under Section 139 of the Act and,

therefore, he is liable to be convicted and sentenced for offence committed under Section 138 of the Act. He has prayed for setting aside of the impugned judgment of acquittal and has claimed conviction of the respondent for offence under Section 138 of the Act.

I have heard learned counsel for the applicant-complainant.

Perusal of the record reveals that the applicant while appearing before the trial Court as PW1 has deposed that he was working at the shop of the respondent and was getting Rs. 250/- per day as wages. The respondent had taken a sum of Rs.1,00,000/- from him (petitioner) as loan for his business. However, when he demanded the said money, the respondent had issued the cheque in question on 29.04.2011 in favour of petitioner-complainant, which on presentation to the bank, returned dishonoured. Thereafter, he got issued a legal notice to the respondent on 03.06.2011 and then, filed the present complaint under Section 138 of the Act.

However, in his cross-examination, the applicant has deposed that he has neither any writings regarding Rs.1,00,000/- nor he maintains any Diary, Book, Bahi or accounts. He does not remember the date, month and year of the lending of Rs.1,00,000/- to the respondent. There is no supportive evidence or material on record except the self-serving statement of the applicant so as to prove the factum of legally enforceable debt of the respondent towards the applicant. He has also failed to prove the source of amount of Rs.1,00,000/- as he has stated in his cross-examination that he has no bank account and before this, he has never lent any amount to anybody. Though he has stated in his cross-examination that he had given Rs.1,00,000/- to the respondent after taking the same from his friends, but he has not

examined any of his friend to prove this fact. Thus, the applicant has failed to prove that he had financial capacity to extend the loan amount to the respondent. In these circumstances, the respondent has been able to rebut the presumption available in favour of the petitioner-complainant under Sections 118 and 139 of the Act as the applicant has failed to prove that the cheque in question had been issued in discharge of any legally enforceable debt or liability.

The petitioner has failed to show any misreading of evidence by learned trial Court and has not been able to point out any legal error in the judgment under challenge which may warrant interference by this Court. When no evidence to connect the respondent-accused with the alleged offence is available on record, no case is made out for interference in the impugned judgment of acquittal dated 06.10.2014 passed by learned Judicial Magistrate 1st Class, Jind.

Apart from this, the order dated 11.09.2017 passed by this Court, vide which costs of Rs.5,000/- was imposed upon the applicant, has not been complied with by the applicant. Therefore, the present petition is liable to be dismissed on this score as well.

The present application is, consequently, dismissed. Leave to appeal is declined.

November 10, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No