

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

CRM No.A-202-MA of 2014 (O&M)

Date of decision: November 13, 2017

Subhash Kumar

...Applicant

Versus

Vinod Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Tarun Vir Singh Lehal, Advocate
for the applicant.

Mr.Rajinder Sharma, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Subhash Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Vinod Kumar, challenging the impugned judgment dated 13.11.2013 passed by learned Addl. Sessions Judge, Amritsar, vide which appeal filed by accused-respondent against the judgment of conviction and order of sentence dated 11.12.2012 passed by learned Judicial Magistrate Ist Class, Amritsar, was allowed and he was acquitted of the charge framed against him.

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 in case leave to appeal is not granted to the applicant, it

would cause injustice. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Subhash filed a complaint against accused Vinod Kumar. As per the complainant's version, accused is his real brother and he has borrowed a sum of ₹95,000/- from the complainant and assured that whenever complainant demands his loan amount, he will return the same. The accused in order to discharge his legal debt/liability, issued one cheque bearing No.649921 dated 17.11.2009 for a sum of ₹95,000/- in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Funds Insufficient'. Legal notice was issued. When the payment was not made, then the complaint were filed within time.

After the close of the complainant evidence, the accused was examined under Section 313 Cr.P.C. and he denied all incriminating evidence against him. He further deposed that the cheque in dispute was stolen from his tea stall and he has lodged report with the police regarding the theft. He does not owe any amount to the complainant nor he has issued the cheque in question to the complainant. In defence, accused examined DE-1 Partap Singh, DW-2 Vikram Devgan, DW-3 Head Constable Lakhbir Singh and DW-4 Harpreet Singh.

Learned JMIC, Amritsar, after appreciating the evidence, convicted the accused-respondent under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay fine of ₹1000/- and in default of payment of fine, to undergo simple imprisonment for a period of two months. An appeal was filed by accused-respondent and learned Addl. Sessions Judge,

Amritsar, accepted the appeal vide impugned judgment dated 13.11.2013

and acquitted the accused-respondent.

Aggrieved from the judgment dated 13.11.2013 passed by learned Addl. Sessions Judge, Amritsar, present application seeking to 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.

From the record, first of all, I find that no date, month and year has been mentioned as to when the amount has been paid to the accused by the complainant. No document of any type has been taken after lending the amount of ₹95,000/-. There is no document on the record to show this loan transaction. There is no date, month and year as to when the amount was demanded or paid. In view of the law laid down by the Hon'ble Supreme Court in *Vijay Vs Laxman & Another 2013(1) R.C.R (Crim) S.C 1028*, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

Furthermore, the defence of the accused is also probable one because the complainant is his brother and there is every chance that cheque in question can come to his hands. The report regarding the theft of the cheque has been lodged on 11.11.2009 whereas the cheque is dated 17.11.2009. Therefore, before the issuance of the cheque, report has already been lodged by the accused to show the theft of the cheque. The accused has also given the reply to the legal notice. In the reply to the legal notice, the accused has already taken the plea that he has neither borrowed any

the complainant. There is no mention regarding this reply in the complaint.

From perusal of the reasonings given by learned Addl. Sessions Judge, Amritsar, after re-appreciating the evidence, I find that the findings given by learned lower Appellate Court while acquitting the accused-respondent are correct, as per law and evidence. The evidence has been re-appreciated in right perspective. 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. In no way, the findings given by learned Addl. Sessions Judge, Amritsar, can be held as perverse or against the law.

In view of the above discussion, I find that the impugned judgment dated 13.11.2013 passed by learned Addl. Sessions Judge, Amritsar, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

November 13, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No