

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

CRM No.A-208-MA of 2014 (O&M)

Date of decision: March 21, 2017

Waryam Singh

...Applicant

Versus

Tara Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bipan Sharma, Advocate for
Mr.S.M.Sharma, Advocate
for the applicant.

None for the respondent.

INDERJIT SINGH, J.

Applicant-Waryam Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Tara Chand, challenging the impugned judgment dated 14.12.2012 passed by learned Judicial Magistrate Ist Class, Ambala, 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 Waryam Singh filed a complaint against accused Tara Chand under Section 138 of the Negotiable Instruments Act. As per complainant's version, he and accused were having

friendly relations with each other. In the last month of year 2006, accused came to the complainant and asked for financial assistance of ₹3 lakhs as his son was admitted in the Apollo Hospital due to some serious disease but the complainant was having only ₹2,50,000/- and he handed over the same to the accused and the accused assured that he would return the amount within one year. The complainant repeatedly visited the accused and lastly, the accused issued cheque bearing No.074758 of ₹2,50,000/- dated 08.11.2008 of post office saving account, which on presentation for encashment, was returned back with the remarks "Insufficient Funds". Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Ambala, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 14.12.2012.

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. Earlier, learned counsel for the respondent was appearing appeared but today, none appeared on behalf of the respondent.

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

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 complaint shows that no date and month has been mentioned as to when the loan was given. It is simply written that in the last of month of year 2006, the accused came for financial assistance of ₹3 lakhs. Secondly, I find that there is not even a single document on record to show the loan transaction. No particulars of the loan transactions have been mentioned in the complaint that at which place, in whose presence and by which mode the amount was paid to the accused.

Further, I find that there is also nothing on the record as to when the loan was demanded back by the complainant. Even no receipt or security document was taken by the complainant at the time of advancing huge amount of ₹2.50 lakhs. During cross-examination, complainant CW-1 admitted that he has filed two cases for cheque bouncing which are against Anil Kumar and Satnam. He stated that he does not have any money lending licence. He also deposed that village of the accused is 30-35 kms. from his village and he has shop of grocery and some other land, and he has not maintained any account of his shop. He further deposed that he is not a sale tax or income tax payee and accused Tara Chand is known to him since 2006. He used to visit the house of the accused in relation to the transaction of money. He admitted it correct that later on he came to know that Tara Chand has only two daughters whereas he borrowed money for the treatment of his son. This cross-examination of the complainant shows that firstly the complainant has no friendly relations with the accused. He was not even knowing that accused has no son, which creates doubt qua version

Further, I find that during cross-examination CW-1 admitted that he had filed the complaint for dishonour of cheque in the month of April against Rupinder Singh, which fact also shows that the complainant is filing the complaints against accused and other persons qua cheque bouncing, which means that he is in the business of money lending. The complainant further admitted in cross-examination that he lent money to accused Tara Chand on 5% interest. He also admitted that he paid ₹50,000/- to Tara Chand on 15.09.2006 and ₹30,000/- in June 2006. He stated that Tara Chand never gave him any interest, rather interest was added in the principal and accused used to borrow further money. The complainant further stated that according to written agreement executed between them, it was agreed upon to pay the interest per month and in case of default, double interest and ₹2500/- as penalty is to be paid by the accused. Such agreement is with him and he does not have any other document regarding the same by which he can prove that he lent the money to the accused. This cross-examination of the complainant that loan of ₹30000/- and ₹50,000/- was taken in June and September 2006 and this money was given on 5% interest and in default, 10% and penalty of ₹2500/- is to be paid and interest amount has been added in the principal etc. shows that version of the complainant that he gave ₹2.50 lakhs to the accused in the last month of year 2006, is a concocted version and cannot be believed.

The complainant further admitted in the cross-examination that accused gave him two blank cheques signed by him on 15.09.2006 and cheque Ex.C1 was filled in by himself i.e. why the ink of writing as well as signature on Ex.C1 is different. All this cross-examination alone, rebuts the

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. Learned Magistrate has rightly acquitted the accused and dismissed the complaint.

In view of the above discussion, I find that the impugned judgment dated 14.12.2012 passed by learned JMIC, Ambala, 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.

March 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No