

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

CRM No.A-279-MA of 2017 (O&M)
Date of decision: November 02, 2017

Sushil Jewellers

...Applicant

Versus

Bhupinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Sharma, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sushil Jewellers has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhupinder Singh, challenging the impugned judgment dated 01.12.2016 passed by learned Judicial Magistrate Ist Class, Rajpura, 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 Suhsil Jewellers filed a complaint against accused Bhupinder Singh under Sections 138 of the Negotiable Instruments Act. As per complainant's version, accused was under legal and enforceable liability to make the payment of certain amount to the complainant and to discharge the said liability accused issued a

favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Exceeds Arrangements'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

After the completion of complainant evidence, the accused was examined under Section 313 Cr.P.C. He denied all the allegations and pleaded his false implication. He also stated that he is not under any legal liability against the complainant. He never issued any cheque in favour of complainant at any time. Complainant is misusing the cheque at the instance of Devi Dayal and he has also lodged FIR No.180 dated 28.7.2013 under Sections 406 and 420 IPC, P.S.City Rajpura against said Devi Dayal.

Learned JMIC, Rajpura, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 01.12.2016.

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 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 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 the complainant in cross-

examination admitted that he is doing the business of Jewellery as well as finance and he has the finance business under the name of Karan-Arjun Finance Company, which is also situated in the same shop and he knows the accused for the last more than 11-12 years and he has finance dealing with the accused which was started in the year 2008 and accused initially borrowed an amount of ₹50,000/- from him and lastly he borrowed ₹6 lacs from him in January 2012, but no writing was executed in respect of said transaction. He further deposed that he had showed the transaction of loan of ₹6 lacs in his income tax return for the year 2011-12. He further deposed that he maintained accounts of his firm but he was unable to produce any record as record is destroyed after every 2-3 years. He denied the suggestion put to him that he has also filed complaint against accused before the police authority. He admitted that income tax returns brought by him related to him personally and not related to his firm and gross transaction as per income tax return was for amount of ₹3,22,250/-. He also admitted that no transaction has been shown for the amount of Rs.6 lacs for the year 2012-13. He further stated that he had given loan at least to 30-40 people and he had also obtained licence to run the finance company.

The perusal of the record shows that first of all, no date month and year has been mentioned in the complaint as to when the liability arose in this case. Even, the complainant has not mentioned the amount of liability. No other particulars of any type that in whose presence, at what time and at which place the amount was given. No security document has been obtained from the accused and even no receipt has been taken. There is no document on record to show this loan transaction. If the complainant is

no account book has been produced. The version of the complainant that he used to destroy the account books after 2-3 years, is not believable. If the complainant has not received the money from the accused, how he can destroy the account books. It is looks that entry is not there in the books maintained by the complainant. Furthermore, it also looks improbable that complainant is giving loan to 30-40 persons and destroying the loan record after 2-3 years.

As per the law laid down 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 rebutted. ₹6 lakhs is a huge amount and this amount has not been shown in the income tax return. Nothing is there that from where this amount has come to complainant. Learned Court below also disbelieved the statement of the complainant.

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 01.12.2016 passed by learned JMIC, Rajpura, 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.

November 02, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No