

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

**CRM No.A-42-MA of 2017 (O&M)
Date of decision: October 25, 2017**

Ranbir Singh

...Applicant

Versus

Bijender Siwach

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Deepshikha Chauhan, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Ranbir Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bijender Siwach, challenging the impugned judgment dated 12.12.2016 passed by learned Judicial Magistrate Ist Class, Panipat, 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 Ranbir Singh filed a complaint against accused Bijender Siwach under Sections 138/142 of the Negotiable Instruments Act. As per complainant's version, the accused was having cordial relations and visiting terms with complainant and in the month of September 2014, the accused was in dire need of money to meet out his business as well as domestic requirements and as such, he contacted

the complainant and requested him to give an amount of ₹9 lakhs. The

accused assured that he would repay the said amount within four months. The complainant paid an amount of ₹9 lakhs in the first week of September 2014 to the accused and in order to discharge his liability, the accused issued cheque bearing No.000001 dated 30.12.2014 for an amount of ₹9 lakhs 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.

The complainant examined himself as CW-1 and proved cheque, memo, legal notice, postal receipt and cheque deposit slip.

In the statement under Section 313 Cr.P.C., the accused took the plea that he had never taken any money from the complainant and he had never issued any cheque to the complainant. The accused further pleaded that complainant took benefit of his connections and had got the cheque in question stolen from his house. He is not liable to repay any amount to the complainant and the cheque in question was not issued in discharge of any legal debt or liability.

Learned JMIC, Panipat, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 12.12.2016.

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.

The perusal of the record shows that first of all, in the present case, no specific date has been mentioned as to when the amount of ₹9 lakhs was paid by the complainant to the accused. As per the complainant, ₹9 lakhs was given due to friendly relations but amount of ₹9 lakhs is a huge amount. Nothing is there in the evidence from where this amount came to the complainant. Such a huge amount cannot be kept in the house. It is not the case of the complainant that he has withdrawn the amount from the bank or paid the same to the accused through cheque, draft etc. No receipt has been obtained while advancing such a huge amount. It is in the complaint that accused required the amount for business purposes but the amount has not been given on interest etc. It is not the case of the complainant that he had sold some property or due to any other reason the money was lying with him in the house. The capacity to lend and source of huge amount of ₹9 lakhs has not been disclosed.

Furthermore, no security document has been obtained at the time of advancing the loan amount. There is no document on record to show this loan transaction. No witness has been examined in whose presence such a huge amount was given. No income tax return or other record has been produced. As per the evidence, the complainant is a property dealer and owns only two acres of land. The denial of the accused regarding any

his house, looks probable. Even if it is taken that the complainant has very good relations with the accused and he has not taken any receipt or security document at the time of giving of such a huge amount, even then, after the issuance of cheque on 30.12.2014, what problem came in the relationship that the legal notice was given just after 16 days or after about four months of the lending of the amount. There is nothing that complainant after the dishonouring of the cheque, ever contacted the accused or presented the cheque for second time etc., which fact also shows that the complainant has no so much cordial relations with the accused to give amount of ₹9 lakhs without any document etc.

Keeping in view the law laid down in *Vijay Vs Laxman & Another 2013(1) R.C.R (Crim) S.C 1028*, the defence raised by the accused is probable one and the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

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 12.12.2016 passed by learned JMIC, Panipat, 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.

October 25, 2017

Vgulati

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No