

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

CRM No.A-476-MA of 2014 (O&M)

Date of decision: March 16, 2017

Jai Pal

...Applicant

Versus

Abhishek Bansal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mohit Garg, Advocate
for the applicant.

Mr.Gurcharan Dass, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Jai Pal has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent Abhishek Bansal, challenging the impugned judgment dated 01.02.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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 further stated that manifest injustice would be caused if the judgment of acquittal is not set aside. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Jai Pal filed a complaint

against accused Abhishek Bansal under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused borrowed an amount of ₹4,50,000/- from the complainant. The accused in discharge of his legal liability issued a cheque No.103469 dated 12.07.2012 for ₹4,50,000/- in favour of the complainant, which on presentation for encashment, was returned back along with the remarks "Payment Stopped by Drawer". Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused took the defence that his brother Abhinav was running a private chit fund company and he was to pay ₹5,50,000/- to the complainant as the complainant was also the member of chit fund company. The accused further pleaded that he had issued three cheques bearing No. 38542, 38543 and 38544 out his saving bank account for an amount of ₹3,50,000/- and two Cheques for ₹1,00,000/- each to the complainant as a collateral security for the liability of Abhinav Bansal. He further pleaded that false complaint has been filed against him with an intention to harass the accused and in fact he stopped the payment of the cheque in dispute as he had no liability towards complainant.

Learned JMIC, Ludhiana, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 01.02.2014.

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. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties 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 no date, month and year has been mentioned as to when the amount of ₹4.5 lakhs was given by the complainant to the accused. No particulars of any type have been mentioned in the complaint that in whose presence and at which place the amount was given and what was the mode of the payment, whether it is by cash or cheque. There is nothing on the record as to when the loan was demanded. There is also nothing that on which date, the complainant demanded back the loan. There is no document of any type to show the loan transaction. No security document has been obtained from the accused at the time of advancing such a huge amount of ₹4.5 lakhs. Even nothing is on the record to show from where the amount was given by the complainant to the accused, whether it has been withdrawn from the bank or the amount was lying at home etc. The accused has examined his brother Abhinav Bansal as DW-1, who has deposed as per the defence of the accused and has produced the diaries on the record. He has also stated that still amount of ₹1,70,000/- is payable by him to the complainant. There is no suggestion to DW-1 that complainant has no such chit fund transaction with DW-1

supported and corroborated the defence version, who was also the member/part of the Chit Fund company.

The complainant in cross-examination has admitted that he knew accused Abshik Bansal for the last 2 ½ years. He came to know the accused through his brother Abhinav Bansal. The complainant also stated that he had no other document except the cheques in question in order to show that he had given the loan to the accused. CW1 in his cross examination has deposed that he had visited the house of the accused but he could not tell his address. The complainant further stated that he could not tell what the accused was doing. He could not tell whether the accused was in service, business and job. He also deposed that he had not verified about the financial position of the accused before lending the alleged amount of the cheque. The Court held that from this cross-examination, it is clear that the accused was not known much to the complainant. It looks improbable that a person would give a loan of ₹4.5 lakhs to an unknown person without obtaining any security document etc.

The defence raised by the accused is probable one, which is duly supported by the defence evidence as well as from the evidence of the complainant. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused.

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.

In view of the above discussion, I find that the impugned

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 16, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No