

CRM-A-519-MA-2014

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

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Date of Decision: 25.04.2017

Parveen Kumar

..Applicant/Appellant

Versus

Jeeta

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Akshay Jindal, Advocate for
the applicant.

Mr. G.S.Sandhu, Advocate,
for the respondent.

INDERJIT SINGH, J.

Applicant-Parveen Kumar has filed this application under Section 378 (4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent-Jeeta, challenging the impugned judgment dated 01.02.2014 passed by learned Judicial Magistrate Ist Class, Karnal, in criminal complaint No.665 dated 23.08.2011, titled as 'Parveen Kumar vs. Jeeta', filed under Section 138 of the N.I.Act, vide which the respondent-accused 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 the impugned judgment passed by

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learned Judicial Magistrate Ist Class, Karnal, acquitting the respondent under Section 138 of the N.I.Act, is based on surmises and conjectures and contrary to the law and evidence on record and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued. The respondent put in appearance through his counsel and contested this application.

I have heard learned counsel for the parties and gone through the record.

From the record, I find that applicant-complainant, Parveen Kumar filed a complaint against respondent-accused under Section 138 of the N.I.Act. The brief facts of the case, as noted down in the judgment passed by learned Judicial Magistrate Ist Class, Karnal, are as under:

“Brief facts of the present complaint are that the complainant was the partner in M/s Kali Ram Praveen Kumar, Gharaunda which deals in sale and purchase of food grains. The accused, being an agriculturist, used to sell his agricultural produce through the complainant and take advances from time to time to meet his personal needs. The complainant firm maintained the account of accused in the account books prepared and maintained in ordinary course of business. In these account books, due entries were made under the head of credit and debit. On 14.12.2010, accused alongwith his wife approached complainant to borrow an amount of Rs.2,50,000/- for

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paying the installment of Credit Limit availed by his wife from Oriental Bank of Commerce. Acceding to his request, the complainant issued the account payee cheque No.009645, drawn at firm's account, in favour of accused's wife. It was in discharge of this liability, accused issued cheque no.014054 dated 14.02.2011 of Rs.2,50,000/- drawn at oriental Bank of Commerce, Gharaunda in favour of the complainant. The complainant presented the cheque for encashment with his bankers but the same was returned unpaid with remarks, "Account Closed" vide memo dated 25.06.2011. Thereafter, statutory legal notice dated 04.07.2011 was served upon the accused through registered post whereby he was called upon to make the payment of the cheque but the accused did not make the payment within the stipulated time period of 15 days. Hence, the complainant filed the present complaint."

Learned Judicial Magistrate Ist Class, Karnal, after appreciating the evidence, acquitted the respondent-accused 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.

After hearing learned counsel for the applicant and after going through the record, especially the judgment passed by the trial Court, I find that the findings have been given as per law and evidence. In no way, the findings can be held as perverse or against the evidence. At the time of arguments, nothing has been pointed out as to how the findings are perverse or against the law. Nothing has been pointed out as

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to which material evidence has been misread and which material evidence has not been considered by the Court below.

Perusal of the record shows that as per the complainant's version, the amount was paid through an account payee cheque in favour of the wife of accused, but she has not been made an accused in this case.

Learned Magistrate held that entire evidence led by the complainant as well as cross-examination of the complainant and statement of accused under Section 313 show that an amount of ₹2,50,000/- was borrowed as a loan by the wife of accused for payment of installment of Credit Limit with Oriental Bank of Commerce, Gharaunda. However, the complainant did not take any acknowledgment from the wife of accused to the effect that she borrowed an amount of ₹2,50,000/- as a loan from the complainant. The complainant deposed that an entry of lending ₹2,50,000/- to the wife of accused was made in the *Bahi*, but no *Bahi* has been placed on record by the complainant. The complainant did not obtain the signature of the wife of accused as acknowledgment of receiving of an amount of ₹2,50,000/- in the *Bahi* record. Furthermore, the complainant did not take any security from the accused or his wife when he lent ₹2,50,000/- to the wife of accused. There is nothing on record to show as to why the complainant has not taken the cheque from the wife of accused instead of accused for securing his repayment. The wife of accused was also having the bank account. The accused has raised the probable defence. Moreover, the

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complainant did not tender his income-tax return for the year 2009-10 to ascertain as to whether any amount was given to the wife of accused as a loan or it was the payment which the complainant was required to pay to the accused on account of the agricultural produce sold through him, as alleged by the accused. The trial Court further held that the signature and remaining columns of the cheque were filled up by the different persons. The liability of the accused has not been established by the complainant.

Keeping in view the above facts, I find that the presumption under Section 139 of the N.I.Act has been duly rebutted by the accused by raising probable defence. From the above discussion, I find that findings given by the trial Court are correct and in right perspective and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) read with Section 482 Cr.P.C., the same is dismissed.

25.04.2017

parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No