

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

CRM No.A-50-MA of 2015 (O&M)
Date of decision: September 19, 2017

Pradeep Tiwari

...Applicant

Versus

Prem Sagar Pandey

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Deepa Jain, Advocate for
Mr.Yash Dev Kaushik, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Pradeep Tiwari has filed this application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against respondent Prem Sagar Pandey, challenging the impugned judgment dated 02.12.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 judgment of acquittal of the accused has caused grave miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Pradeep Tiwari filed a complaint against accused Prem Sagar Pandey under Section 138 of the

Negotiable Instruments Act. As per complainant's version, accused approached the complainant and borrowed a sum of ₹3,50,000/- as friendly loan from the complainant for his personal use and promised to return the same within six months. Accused issued cheque bearing No.649911 dated 10.08.2011 for ₹3,50,000/- in favour of the complainant, which on presentation for encashment was returned back dishonoured with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In the statement under Section 313 Cr.P.C., the accused took the defence that he never borrowed loan from the complainant and never issued any cheque in favour of the complainant. The cheque in question was issued to his son Rakesh in August 2008. He further stated that he had received the legal notice and he pleaded false implication in this case. In defence, accused examined himself as DW-1, DW-2 Sh.Rakesh Pandey and DW-3 Sh.Sanjay Sachdeva.

Learned JMIC, Faridabad, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 02.12.2014.

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 complaint shows that no date, month and year has been mentioned as to when the loan was advanced to the accused. There are no particulars that at which place and in whose presence the loan was advanced and whether the same was given in cash or by way of cheque or whether the money was given at one time or several times. There is no particular as to when the loan was demanded back by the complainant. Further, no security document was got executed by the complainant at the time of advancing such a huge amount. There is no document on the record to show any loan transaction.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused by raising probable defence. This fact, giving no particulars of the loan amount, as to when it was advanced nor there being any document to support the loan transaction, corroborates the version that the accused has not borrowed the amount. Furthermore, the complainant in the evidence has stated that he himself borrowed the amount from Shadi Lal and Anil on interest @ 3 to 5%. It looks improbable and unnatural that a person will take money as a loan on interest and will give it to other person without executing any document and without charging any interest. Moreover, Shadi Lal and Anil have not been examined.

The defence of the accused is that he has given this cheque to Rakesh Pandey in 2008. This fact is further supported by the fact that before issuing legal notice to the present accused, the complainant had issued legal

notice on 24.12.2011 to son of the accused namely Rakesh Pandey and that legal notice is Ex.D1. The legal notice, in this case Ex.C3, has been issued to the present accused on 06.02.2012. This fact further supports the defence of the accused. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence, which is supported from the case of the complainant and defence evidence.

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 02.12.2014 passed by learned JMIC, Faridabad, 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.

September 19, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No