

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

**CRM No.A-543-MA of 2017 (O&M)
Date of decision: September 06, 2017**

Joginderpal

...Applicant

Versus

Ram Saroop

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kushaldeep S. Sandhu, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Joginderpal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ram Saroop, challenging the impugned judgment dated 05.12.2016 passed by learned Judicial Magistrate Ist Class, Abohar, 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 Joginderpal filed a complaint against accused Ram Saroop under Section 138 of the Negotiable Instruments Act. As per complainant's version, in discharge of legal liability towards the complainant, the accused issued a cheque bearing No.365644 dated 30.11.2015 for amount of ₹50,000/- in favour of the complainant,

which on presentation for encashment, was returned back dishonoured with the remarks 'Account Blocked'. 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 plea that there is no such legal liability which the complainant is alleging. He further submitted that there were previous transactions between the complainant and the accused and by placing on record Ex.D1 to Ex.D5, accused proved on record that he has cleared the amount and closed his account. He further stated that complainant has failed to prove that there was any transaction between the complainant and accused after the year 2009-10. It is also the case of the accused that there are no particulars of any loan transaction between the parties regarding which the cheque is stated to be issued.

Learned JMIC, Abohar, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 05.12.2016.

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

what illegality has been committed by learned Court below.

From the record, first of all, I find that the complainant has not mentioned any date, month and year, as to when this liability arose. There is no particular regarding the nature of the liability, whether it was a loan transaction or business transaction. There is nothing that in whose presence this liability arose. There is also no particular as to when the demand was raised to return this amount. No security document has been taken nor there is any document on the record to prove this loan transaction etc.

From the evidence on record, learned trial court held that complainant is a well educated person and also maintaining his account. By giving no particulars, the complainant has supported the defence of the accused that there is no such liability and the case of the accused is covered by the law laid down in *Vijay vs. Laxman and anr. 2013(2) CCC 107*.

Further, I find that the complainant is admittedly income tax payee but this transaction has not been shown in the income tax return. The documents tendered by the accused i.e. Ex.D1 to Ex.D5, show that no liability remained and the account had already been settled upto the year 2009-10.

The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the accused has raised probable defence, which is supported by the case of the complainant as well as the 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 05.12.2016 passed by learned JMIC, Abohar, 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 06, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No