

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

**CRM No.A-501-MA of 2015 (O&M)
Date of decision: October 25, 2017**

Sat Pal

...Applicant

Versus

Angrej Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravish Bansal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sat Pal has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent Angrej Singh, challenging the impugned judgment dated 15.01.2015 passed by learned Addl. Chief Judicial Magistrate, Sri Muktsar Sahib, 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 Satpal filed a complaint against accused Angrej Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, he is sole proprietor of firm M/s Bhag Mal Sat Pal which is a commission agency, advanced loan to the accused, who used to sell crops at the commission agency of the complainant. The accused in discharge of part liability, issued cheque

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.

Learned ACJM, Sri Muktsar Sahib, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 15.01.2015.

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.

From the record, I find that no date, month and year has been mentioned regarding the liability as to when it arose. Whether liability arose in one transaction or on many dates. No record has been produced by the complainant. The complainant is a commission agent and is maintaining record but no record has been produced to show that amount in question was due and payable by the accused.

On the other hand, the defence of the accused is that he is an agriculturist and the complainant's firm is doing work of commission agency. The farmers used to sell crops to them and complainant used to

take cheque as a security from them. The above-said firm has taken some blank cheques from the accused as a security. When he sold his crops in the year 2000 to the complainant for ₹2 lakhs and asked for settling of account, then the complainant has filed the present false complaint against him.

The accused has raised probable defence. It is admitted that complainant is a commission agent and accused is an agriculturist. It is also admitted fact that accused used to sell the crops through the commission agency of the complainant. Except the statement of the complainant, no other witness has been examined. No record of any type has been produced to show the transaction. Otherwise also, there is no explanation as to why no security document has been got executed or the receipt was not obtained after giving this amount.

The complainant in cross-examination has stated that he has not brought the account books in which he has made entries regarding the above-said loan transaction but he has made entries in the account books. Non-production of the account books supports the defence version that there is no such loan transaction. Furthermore, the complainant has stated that he used to file income tax return but the same has also not been produced. The Court below held that as per Section 269-SS of Income Tax Act, such a huge amount cannot be given in cash.

I have gone through the findings given by learned Magistrate and the same are as per evidence and law. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused from the case of the complainant as well as defence evidence. The defence of the accused is supported and corroborated from the case of the

any type has been given qua the loan transaction and there is no document to show the same. Learned trial Court after relying upon the law laid down in *Vijay Vs Laxman & Another 2013(1) R.C.R (Crim) S.C 1028*, acquitted the accused.

Learned counsel for the application contended that he has also filed a criminal misc. application for leading additional evidence and wants to produce documents on record. Qua this application, I find that the record maintained by the complainant was with the complainant at the time of giving evidence. He was having full knowledge regarding this evidence which he now wants to prove. Further, the complainant was asked in the cross-examination specifically regarding the entries and account books but he has not produced the account books nor any witness was examined. Therefore, applicant cannot be allowed to lead that additional evidence at this stage.

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 15.01.2015 passed by learned ACJM, Sri Muktsar Sahib, 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