

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

CRM No.A-883-MA of 2017 (O&M)
Date of decision: August 28, 2017

Saroj Sethi

...Applicant

Versus

Tara Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Deepak Kaushal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Saroj Sethi has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Tara Devi, challenging the impugned judgment dated 21.03.2017 passed by learned Sub Divisional Judicial Magistrate, Malout, 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 Saroj Sethi filed a complaint against accused Tara Devi under Section 138 of the Negotiable Instruments Act. As per complainant's version, in discharge of legal liability, the accused issued cheque bearing No.962234 dated 10.02.2015 for ₹6 lakhs, 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 plea that she has neither took any loan from complainant nor issued any cheque in favour of complainant. In defence, accused examined DW-1 Kaur Singh, Registry Clerk, who proved the copy of sale deed dated 06.01.2014. DW-2 Dinesh Kumar, Clerk, SBI Malout, who proved the statement of account of complainant. DW-3 Gurbaj Singh, Agricultural Officer, who proved the account statement Ex.D3 and D3/A. Accused also tendered into evidence some other documents, statement of complainant etc.

Learned SDJM, Malout, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 21.03.2017.

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 as per defence version, the cheque in question has been given by the accused to the complainant being member of chit fund committee being run by complainant. It has been argued by learned counsel for the accused before the Court below that cheque book of the accused having cheque no.962231 to 962240 was handed over by her to

the complainant in the year 2013 as security being member of the chit fund committee, but, even after the completion of committee, the complainant did not return the above said cheques. It is also the case of the accused that she filed suit for rendition of account along with mandatory injunction against the complainant for returning the blank signed cheques. It is further argued on behalf of the accused that Dayawanti, mother of the complainant, has also filed complaint under Section 138 of the Negotiable Instruments Act qua cheque bearing No.962233 for amount of ₹2 lakhs.

Learned Magistrate after discussing the cross-examination of complainant found that CW-1 complainant admitted that she is a house wife and does not do any job. She also stated that she does not file any income tax return. She further admitted that except her children no one witnessed the transaction between her and accused. The complainant also admitted in her statement as DW-1 in civil suit for rendition of account that Dayawanti does not do any work. The Court below held that source of ₹6 lakhs, which is a huge amount, has not been proved on record.

The statements of two bank accounts of the complainant have been produced on the record. There are entries of withdrawal of ₹2 lakhs dated 17.07.2013, ₹2 lakhs dated 02.12.2014 and in another account, there is entry of ₹1,40,000/- dated 17.07.2013. But it is the case of the complainant that loan was given to the accused on 09.12.2014. Therefore, withdrawal of ₹2 lakhs and ₹1,40,000/- on 17.07.2013, in no way, can be connected with the present case. Furthermore, the accused has produced the copy of sale deed vide which the complainant has purchased property in January 2014.

body of the cheque is filled with black ink, which also supports the defence of the accused. It also looks improbable that huge amount of ₹6 lakhs was given to the accused without obtaining any receipt and security document etc. Again, it looks unnatural that ₹6 lakhs was given by the complainant within a span of three months, when ₹2 lakhs was already given by the mother of the complainant and that too without getting any security document.

The accused is only to raise probable defence to rebut the presumption under Section 139 of the Negotiable Instruments Act. From the record, I find that the defence raised by the accused is probable one and has been supported by the statement of complainant as well as defence evidence. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

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 21.03.2017 passed by learned SDJM, Malout, 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.

August 28, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No