

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

CRM No.A-954-MA of 2015 (O&M)

Date of decision: September 29, 2017

Suresh Kumar s/o Ram Kishan

...Applicant

Versus

Suresh Kumar s/o Hukam Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Momi, Advocate
for the applicant.

None for the respondent.

INDERJIT SINGH, J.

Applicant-Suresh Kumar s/o Ram Kishan has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Suresh Kumar s/o Hukam Chand, challenging the impugned judgment dated 24.04.2015 passed by learned Presiding Officer-cum-Judicial Magistrate Ist Class, Kurukshetra, 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 Suresh Kumar s/o Ram Kishan filed a complaint against accused Suresh Kumar s/o Hukam Chand

complainant's version, in order to discharge his liabilities, the accused issued cheque bearing No.114703 dated 17.03.2012 for a sum of ₹5,90,000/- for repayment of borrowed amount advanced to the accused. The cheque 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.

In the statement under Section 313 Cr.P.C, the accused denied all the incriminating evidence against him and in defence, accused examined DW-1 Rajinder Singh, DW-2 Sanjeev Kumar, DW-3 Constable Pardeep Kumar, DW-4 Sandeep Kumar, DW-5 Subhash Kumar and DW-6 Ved Parkash and also proved so many documents. The defence of the accused is that he has not given any cheque to the complainant, rather, it was given to Rajinder for the allotment of plot in HUDA as there is a necessity of submitting a blank cheque with such application, which is clarified by DW-6 Ved Parkash. It is also the case of the accused that he along with his brother-in-law has filed a complaint qua another cheque which was dismissed due to bar of limitation but brother-in-law of complainant namely Joginder has also filed a suit for recovery against the accused, whereas accused has no dealing with the complainant. It is further the case of the accused that he has given application to the Superintendent of Police qua misuse of cheque by the complainant as well as his brother-in-law but no action was taken.

Learned JMIC, Kurukshetra, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 24.04.2015.

Aggrieved from the above-said judgment, present appeal along

with application for grant of leave to appeal has been filed.

Notice of motion was issued. Earlier, learned counsel for the respondent appeared and contested the petition but today none has put in appearance on his behalf.

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.

First of all, there is nothing on the record to show the particulars of liability as to when this liability arose and what was the nature of the liability. Whether the loan was given or some articles were given. No date, month and year has been given. There is no document on the record to show this transaction nor this transaction has been shown in the income tax return. As per the judgment passed in *Vijay vs. Laxman and anr. 2013(2) CCC 107*, all these facts support the defence of the accused that he has no dealing with the complainant.

Furthermore, the accused has led the evidence by examining DW-3 Pardeep Kumar who proved the application submitted by the accused regarding misuse of the cheques, and recovery suit filed by Joginder was also proved by examining DW-4 Sandeep Kumar. A panchayat was

convened regarding the cheque in question, in which DW-5 Subhash was

present and this evidence was also produced by the accused. Further, the allotment was open at the time when the cheque was issued and for this fact, Clerk from HUDA office has been examined as DW-6. The Court below also discussed the evidence regarding the location of the house as deposed by the complainant and DW-2 Sanjeev Kumar, clarified that accused is living in a Dera from last 8 to 10 years and not in the village and they have sold their house many years back and sale deed has been placed on the record to prove this fact.

Learned Magistrate also doubted the case of the complainant as complainant has stated that he has borrowed ₹4 lakhs from his brother-in-law and he had cash of ₹1,90,000/- with him. The Court below held that no person will borrow amount from other person to give the same to a person with whom he has no close relations. Furthermore, the statement of account of the complainant from 01.08.2008 to 04.04.2014 shows that there was never more than ₹1,90,360/- in his account. Learned Magistrate held that it does not appear that the version given by the complainant is reliable.

The findings given by learned Court below shows that cheque in question is signed with different ink and the body of the cheque is filled with another ink, which shows that blank cheque was filled later on, which further supports the defence version. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence, which is supported by the case of the complainant as well as 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 24.04.2015 passed by learned JMIC, Kurukshetra, 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 29, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No