

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

**CRA No.AS-153 of 2018 (O&M)
Date of decision: November 27, 2018**

Surinder Singh

...Appellant

Versus

Baljinder Pal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Bajaj, Advocate
for the appellant.

Ms.Paramjit Kaur Deol, Advocate
for the respondent.

INDERJIT SINGH, J.

This appeal is outcome of acceptance of an application under Section 378(4) Cr.P.C. for leave to appeal. Learned counsel fro the parties requested that main appeal be also heard today.

The present appeal has been filed by the appellant against the impugned judgment dated 26.10.2013 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the accused-respondents were acquitted.

The brief facts of the case as noted down in the judgment passed by learned JMIC, Jalandhar, are as under:-

“2. Brief facts as per averments made in the complaint are that the complainant is the relative of the accused and in 2008 accused approached the complainant with a proposal to send the family of complainant to America by arranging their Visas

etc and for that purpose demanded Rs. 40 lacs from complainant. Upon his assurance complainant agreed to pay him Rs. 35 lacs in parts. Initially Rs. 10 lacs is to be paid which is paid by the complainant through cheque bearing nos. 004515 and 004516 of Rs. 5 lacs each drawn on ICICI Bank, Adarsh Nagar, Jalandhar and got encashed by the accused. Thereafter in first week of December 2008, accused and his wife approached complainant and said that they have managed the Visas of complainant and his family from Thailand to America and took more money from complainant. Complainant along with his son went to Thailand on 23.12.2008 and stayed till 06.01.2009 but accused failed to arrange Visa and complainant and his son has to return back on 6-3-2009. after returning complainant approached accused and demanded his money back but they assured to arrange visa. Again in the month of March 2010 accused approached the complainant to apply Visa for his son, daughter-in-law and grandson and assured to manage the same. Visa was applied for but gain no visa was granted. Then on asking for money, accused issued cheque bearing No.036101 dated 29.06.2011 for Rs.35,00,000/-drawn on HDFC Bank Ltd., SCO 8 and 9, Crystal Plaza, Garha Road, Chotti Baradari, Jalandhar from their joint account no. 13831930000531 in favour of the complainant. It was assured that the cheque was good for payment and would be honoured when presented. Complainant presented the said cheque for encashment through his banker Oriental Bank of Commerce, Mithapur Road, Jalandhar but it was returned unpaid by the banker of the accused vide memo dated 19.08.2011 on account of "Funds Insufficient". Thereafter through legal notice dated 01.09.2011 sent through registered post and postal receipt sent on 2-9-2011 accused was called upon to make the payment within the prescribed period of 15 days from the receipt of notice but accused failed to pay the same despite having received the notice. Hence the present complaint."

After service of notice of accusation, the complainant was given 12 effective opportunities to conclude his evidence but he failed to complete the same. Hence, the Court closed the evidence of the complainant and acquitted the accused vide impugned judgment dated 26.10.2013.

Notice of motion was issued and learned counsel for the respondent appeared and contested the appeal.

I have heard learned counsel for the parties and have gone

through the record.

Learned counsel for the appellant mainly argued on one point that in the present case, an FIR was also got registered against the complainant regarding tampering of the cheque and the original cheque, which was required in FIR case, was taken by ASI Amrik Singh with permission of the Court from this case with the undertaking to return the same. Learned counsel for the appellant argued that original cheque has not been returned by ASI Amrik Singh and even direction has been given by learned Magistrate but even then, till today, cheque has not been returned. He contended that as the original cheque, which is the base of the case and which was taken by the Investigating Officer and was not on the file, therefore, the complainant could not examine himself as he is to prove the original cheque. This argument has not been contested by learned counsel for the respondent.

I have gone through the lower Court record attached with this case. The perusal of the zimini order shows that ASI Amrik Singh had taken the original cheque in this case with the permission of the Court but has not returned the same. The order dated 16.10.2012 passed by the Court is as under:

“It has brought to my notice that present Amrik Singh has taken away the cheque for the examination purpose with the undertaking to return the same. ASI Amrik Singh has not returned the same. Therefore, a direction is seek to ASI Amrik Singh to return the cheque for evidence purpose. Now to come up on 05.12.2012 for direction be also issued to Amrik singh to return the cheque on or before the date fixed.”

The perusal of the record further shows that the cheque has not

been returned by ASI Amrik Singh despite direction by learned Magistrate and without original cheque, the complainant's statement could not have been recorded.

The impugned order passed by learned Magistrate declining further opportunity to the complainant to lead evidence and acquittal of the accused, has caused irreparable loss to the complainant and is not as per law. Learned Magistrate should have procured the original cheque from Investigating Officer ASI Amrik Singh and then should have granted opportunity to the complainant to lead evidence.

In view of the above discussion, I find that the judgment dated 26.10.2013 passed by learned JMIC, Jalandhar, is not as per law and the same is set aside. The case is remanded back. The parties are directed to appear before the trial Court on 07.01.2019. Learned Magistrate is directed to first procure the original cheque from ASI Amrik Singh/police by giving him direction and then reasonable opportunities be given to the complainant to produce evidence and to proceed with the case, as per law.

The present appeal stands allowed accordingly.

November 27, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No