

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

**CRM No.A-7-MA of 2012 (O&M)
Date of decision: October 05, 2018**

Puneet Kumar

...Applicant

Versus

Kailash Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Giri, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Puneet Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Kailash Rani, challenging the impugned judgment dated 02.11.2011 passed by learned Addl. Chief Judicial Magistrate, Kaithal, 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, complainant Puneet Kumar filed a complaint against accused Smt.Kailash Rani under Section 138 of the Negotiable Instruments Act. As per complainant's version, he had given a loan to the accused to the tune of ₹95,000/-, in discharge of which, accused had issued cheque bearing No.265441 dated 15.04.2007, in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Insufficient Funds'. Legal notice was served. When the

amount was not paid, then the complaint was filed within time.

The complainant examined CW-1 Amrit Lal Chauhan, Assistant, SBI, CW-2 Sham Sunder Chawla, Senior Manger, PNB, CW-3 Krishan Lal, Clerk to Advocate and examined himself as CW-4. At the close of the complainant evidence, accused was examined under Section 313 Cr.P.C. She was confronted with the evidence of the complainant. She denied all the incriminating evidence against her and pleaded her innocence. In defence, accused examined her daughter Renu as DW-1. It is the case of the accused that she was a member of the chit fund committee being run by mother of the complainant and was paying monthly installment of ₹2,000/- to her. She further pleaded that a blank cheque was given by her to mother of the complainant, which has been misused in the present case. The complainant had no capacity to give loan of ₹95,000/- to her, who was not known to her personally.

Learned ACJM, Kaithal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 02.11.2011.

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. At the time of arguments, 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.

Further, I find that no date, month and year has been mentioned as to when the loan was given. No other particulars of any type have been mentioned that at which place, in whose presence the loan was advanced. No security document was got executed while lending the loan and no receipt has been obtained from the accused. There is no date as to when the amount was demanded back by the complainant. There is no document on record to show the loan transaction. No income tax return has been produced to show lending of amount in question to the accused.

It is settled law that presumption arises in favour of the complainant, if the cheque is signed by the accused but it is also settled law that presumption can be rebutted from the case of the complainant or by producing defence evidence or by both ways. In the present case, presumption has been duly rebutted by raising probable defence which is supported and corroborated from the case of the complainant itself as well as from the defence evidence. In the present case, as already discussed, firstly, the complainant has not produced any document of any type to show the loan transaction, no security document has been got executed and no particulars have been mentioned regarding the loan and in these circumstances, cross-examination of the complainant becomes more important. The complainant in his statement stated that the loan was given by him in cash in two installments of ₹45,000/- and ₹50,000/-, which means that it is an improvement in the version of the complainant. No such fact has been mentioned in the complaint that loan was given in two transactions.

Learned Court below has further held that complainant has

taken contradictory stand with regard to purpose of cheque in question. Earlier, he stated that the cheque was given by the accused as security and amount was duly filled up by the accused but subsequently, he stated that cheque was given on account of payment of loan and not as security. Furthermore, the complainant has stated that it was agreed that loan amount would attract interest @ 1.5% per month but there is no such document to show that accused agreed to pay the interest. The cheque is stated to be of ₹95,000/-, which means that interest amount has not been included in the principle amount while issuing the cheque. The complainant is not knowing the accused and it looks unnatural that a person will give amount of ₹95,000/- without getting any security document executed.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted. 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 02.11.2011 passed by learned ACJM, Kaithal, 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 05, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No