

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

CRM No.A-834-MA of 2012 (O&M)

Date of decision: October 15, 2018

Rai Sahib

...Applicant

Versus

Gurjant Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Aakash Singla, Advocate
for the applicant.

Mr.S.P.S.Tinna, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Rai Sahib has filed this application under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent Gurjant Singh, challenging the impugned judgment dated 24.07.2012 passed by learned Addl. Sessions Judge, Ferozepur, vide which appeal filed by accused-respondent against the judgment of conviction and order of sentence dated 07.04.2011 passed by learned Judicial Magistrate Ist Class, Abohar, was allowed and he was acquitted of the charge framed against him.

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 Rai Sahib filed a complaint against accused Gurjant Singh. As per the complainant's version, he is doing business of commission agent and he is sole proprietor of M/s Baghla Enterprises. In order to discharge his liability towards the complainant, accused issued a cheque bearing No.333264 dated 04.01.2005 for ₹3 lakhs, in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Insufficient Funds'. Legal notice was issued. When the payment was not made, then the complaint was filed within time.

The complainant examined CW-1 Jagdish Lal, Computer Operator, State Bank of Bikaner and Jaipur, Abohar and appeared himself as CW-2 and tendered into evidence documents Ex.P6 to Ex.P18/A. At the close of complainant evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and denied all the incriminating evidence against him and pleaded his false implication. In defence, accused appeared himself as DW-1.

Learned JMIC, Abohar, after appreciating the evidence, convicted the accused-respondent under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 30 days. An appeal was filed by accused-respondent and learned Addl. Sessions Judge, Ferozepur, accepted the appeal vide impugned judgment dated 24.07.2012 and acquitted the accused-respondent.

Aggrieved from the judgment dated 24.07.2012 passed by

learned Addl. Sessions Judge, Ferozepur, present application seeking to

leave to appeal has been filed.

Notice of the application was issued. Learned counsel for the respondent appeared and contested the application.

I have heard learned counsel for the parties and have gone through the record, especially the judgments passed by the Courts below.

From the perusal of the record, I find that the complainant has not mentioned any date, month, year as to when the loan was advanced to the accused. No other particulars of any type have been mentioned in the complaint that how and when the liability arose. No receipt or security document was got executed while lending such a huge amount of ₹3 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction.

Further, I find that in chief-examination, the complainant has only produced documents Ex.P6 to ExP18/A. There is nothing on the record also that when the amount was demanded back. The version of the accused is that he used to sell his crops on the complainant's shop and blank cheques have been taken by complainant as security. Next, I find that a complaint was filed on the basis of another cheque dated 04.07.2004 amounting to ₹90,000/- and that cheque was dishonoured. It looks improbable that when the first cheque given by the accused to the complainant for ₹90,000/-, about six months earlier to the present cheque, was dishonoured, then why the complainant will accept second cheque of

more amount; why accused will give second cheque when already litigation

is pending between the parties regarding earlier cheque.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused by raising probable defence. From the facts that no particulars of any type have been mentioned in the complaint regarding liability and secondly, giving of cheque in question by the accused on 04.01.2005 after five months of the earlier cheque, I find that accused has successfully raised probable defence.

Furthermore, I have gone through the copies of account books produced by the complainant. Only one entry has been signed by the accused of ₹2,84,000/- and other entries were not signed by him. These documents are in ones own favour. Learned Addl. Sessions Judge, Ferozepur, held that these entries have not been proved. It has not been disclosed anywhere as to who scribed those entries. Similar is the fact regarding copies of translation that as to who translated these entries. There is also nothing on the record whether amount of this cheque in question includes interest also etc. It is also not mentioned in the complaint that accused has borrowed the amount; or taken the amount on so many dates; in which year and how much amount is payable by the accused etc.

From perusal of the reasonings given by learned Addl. Sessions Judge, Ferozepur after re-appreciating the evidence, I find that the findings given by learned lower Appellate Court while acquitting the accused-respondent are correct, as per law and evidence. The evidence has been re-appreciated in right perspective. 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. In no way, the findings given by

learned Addl. Sessions Judge, Ferozepur, can be held as perverse or against

the law.

In view of the above discussion, I find that the impugned judgment dated 24.07.2012 passed by learned Addl. Sessions Judge, Ferozepur, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

October 15, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No