

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

**CRM No.A-1022-MA of 2013 (O&M)
Date of decision: September 10, 2018**

Puran Chand Juneja

...Applicant

Versus

Sudarshan Dua

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kunal Dawar, Advocate
for the applicant.

Mr.Anil Shukla, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Puran Chand Juneja has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sudarshan Dua, challenging the impugned judgment dated 19.10.2013 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 Puran Chand Juneja through his

General Power of Attorney holder Nitin Juneja filed a complaint against

accused Sudarshan Dua under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused after admitting and acknowledging the liability of amount due from him, issued cheque bearing No.858361 dated 03.02.2010 for ₹9,90,000/- in favour of complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'No such account'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant//GPA holder Nitin Juneja examined himself as CW-1 and tendered documents. At the close of the complainant evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant. He denied all the incriminating evidence against him. He further pleaded that he never issued the cheque in question in favour of the complainant in discharge of his debt or liability. He made all the payments to the complainant as per his bank statement and the cheque in question had been given as blank signed cheque as guarantee for the repayment of the loan. In defence, accused examined DW-1 Sudarshan Dua, DW-2 Sunder Singh and DW-3 Amar Singh and tendered documents.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 19.10.2013.

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. Learned counsel for the respondent appeared and contested the application.

I have heard learned counsel for the parties 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.

The perusal of the record shows that as per accused, he had only taken ₹3,90,000/- from time to time along with interest @ 5% and he had duly repaid the amount of ₹6,10,000/- by cash as well as by cheque to the complainant. The complainant had taken several cheques including the cheque in question as blank signed cheques for securing his payment but did not return the same in spite of the fact that entire loan having been paid by the accused. It is further the case of accused that he moved a criminal complaint against the complainant and had also filed a civil suit against him to restrain him from misusing the cheques lying in his possession.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, accused has raised probable defence, which is duly supported and corroborated by the defence evidence as well as the documents produced on the record. The criminal complaint was filed by the accused on 06.05.2008 to the SSP, Faridabad, copy of which is on record as Ex.D4. In this complaint, which was given in 2008, it has been specifically

including interest but Puran Chand is not handing over his blank signed cheques and blank signed stamp papers. Further, copy of the civil suit filed by Sudarshan Dua against Puran Chand Juneja, which is Ex.D5, shows that civil suit has been filed on 19.12.2009 i.e. well before the date of cheque as alleged by the complainant. If the accused, in the year 2008 and 2009, has stated that he has returned the money and blank signed cheques are not being returned by the complainant and has filed complaint to SSP, Faridabad and also filed civil suit, then there is no question to issue cheque on 03.02.2010. Rather, it is nowhere the case of the complainant that a post-dated cheque was given to him by the accused. Furthermore, the cheque was dishonoured with the remarks 'no such account' on 09.02.2010. When there was no account at the time of issuance of cheque, then where is the question of issuing cheque by the accused to the complainant. The perusal of the record shows that the defence raised by the accused is probable one, which is supported and corroborated by defence evidence and presumption has duly been rebutted. There is no evidence to show the liability of ₹9,90,000/-. No particulars have been mentioned in the complaint by the complainant to show as how liability of ₹9,90,000/- was existing at the time of issuance of cheque against the accused.

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 19.10.2013 passed by learned JMIC, Faridabad, is correct,

Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

September 10, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No