

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

CRM No.A-1061-MA of 2013 (O&M)

Date of decision: September 12, 2018

Balwinder Singh

...Applicant

Versus

Sunil Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Jagpal, Advocate
for the applicant.

Mr.Ramandeep Singh, Advocate
for the respondent.

INDERJIT SINGH, J.

CRM No.49678 of 2013

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 14 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-1061-MA of 2013

Applicant-Balwinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sunil Sharma, challenging the impugned judgment dated 05.09.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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.

Notice of the application.

Mr.Ramandeep Singh, Advocate, who had already been appearing on behalf of respondent on notice regarding application for condonation of delay, accepts notice of main case on behalf of the respondent and contests the same.

As per the record, complainant Balwinder Singh filed a complaint against accused Sunil Sharma under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused contacted him and induced to send his son abroad for studies. Accused further induced the complainant to part with his valuable security for sending his son abroad. Believing the accused version, complainant agreed to send his son to abroad but accused failed to perform his part. After settlement of accounts, in discharge of his legal liability, the accused issued cheque No.405383 dated 17.07.2006 for a sum of ₹2,25,638/-, in favour of complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Payment stopped by drawer'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1 and CW-2 Rohit Kumar, Personal Banker Sales, HDFC Bank. 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 and pleaded his false implication.

Accused further pleaded that he has never taken any money from the complainant as alleged nor issued said cheque in favour of the complainant nor the same was filled by him and it does not bear his signature. He further pleaded that complainant has misused the cheque in connivance with Jorawara Singh with whom he had monetary dispute in business dealing and both stole the cheque while visiting his house when he was ill. He reported the bank about the missing of the cheque and bank stopped the payment on his instructions. He is under no liability towards the complainant. The accused also examined DW-1 Jaspreet Singh, Customer Care Manager, who proved copy of personal record as Ex.D1 and D2. DW-2 Head Constable Tarsem Singh proved the copy of FIR as Ex.D3.

Learned JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 05.09.2013.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Lower Court record was also requisitioned.

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 no date, month and year has been mentioned regarding the fact that when the liability arose, how it arose and to what extent. There is no particular of any type as to when the money was paid or how the liability arose. No particular of any type has been mentioned in the complaint qua the liability. No receipt or security document was obtained at the time of transaction in question. Furthermore, it looks improbable that accused will take ₹2,25,638/-, rather, he would have taken ₹2,25,500/- or ₹2,24,500/- or ₹2,26,000/- like this, especially, when he is taking money for sending complainant's son abroad. Though, signatures on the cheque were admitted later on.

Even the complainant while appearing in the witness box deposed that he does not remember the date, month and year of advancement of amount. Furthermore, the complainant deposed that amount of ₹2,52,000/- was due against accused after deduction. If amount of ₹2,52,000/- was due, then why the complainant received cheque of lesser amount. There is nothing in the complaint qua that. Further, the complainant is totally ignorant of the details of the transactions and changed his stands and improved his version frequently. The Court below observed that there are contradictions in the version about sending the son of complainant abroad. Learned trial Court has correctly held that defence raised by the accused is probable one. The presumption under Section 139 of the Negotiable Instruments Act, has been duly rebutted.

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 05.09.2013 passed by learned JMIC, Ludhiana, 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 12, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No