

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

CRM No.A-417-MA of 2013 (O&M)

Date of decision: August 09, 2018

Harjeet Singh

...Applicant

Versus

Upkar Singh Sehgal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Dhiraj Chawla, Advocate
for the applicant.

None for the respondent.

INDERJIT SINGH, J.

Applicant-Harjeet Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Upkar Singh Sehgal challenging the impugned judgment dated 05.08.2011 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.

As per the record, complainant Harjeet Singh filed a complaint against accused Upkar Singh Sehgal under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused took a loan of ₹3

lakhs from him and in discharge of his legal liability, accused issued cheque

No.371781 dated 14.03.2009 amounting to ₹3,00,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'Funds Insufficient'. 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 closed the evidence. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C and he was confronted with the evidence of the complainant. He denied the correctness of the evidence and pleaded his false implication. In defence, accused examined himself as DW-1, DW-2 Varun Gagneja, who proved report Ex.D1 along with photographic charts Ex.D2 to Ex.D6 and DW-3 Jasbir Singh, Officer, Punjab National Bank, who placed on record copy of account opening form of accused.

Learned JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 05.08.2011.

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.

On the last date, learned counsel for respondent appeared but today, none appeared on behalf of the respondent.

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the original cheque in the lower Court record itself shows that '0' (Zero) has been inserted in the amount in figures and there is no signature on this assertion. On the face of it, it shows that the cheque is tampered with. When the cheque is tampered, which is also

proved by DW-2 Varun Gagnejra, Handwriting and Fingerprint Expert, then complainant, only on this ground, is not entitled to any relief. There is no presumption in favour the complainant when the original cheque has been tampered with. It becomes more important when no date, month and year has been mentioned by the complainant in the complaint. There is no document to show the loan transaction. There are no particulars of any type that at which place, in whose presence the loan was advanced and what was the mode of payment; whether by cash or by cheque. There is also no evidence on record to show the withdrawal of the amount from the bank etc. No security document or receipt has been taken while lending such a huge amount.

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.

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 view of the above discussion, I find that the impugned judgment dated 05.08.2011 passed by learned JMIC, Ludhiana, is correct, as per law and evidence and does not require any interference from this Court.

application stands dismissed.

August 09, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No