

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

CRM No.A-1101-MA of 2016 (O&M)

Date of decision: July 31, 2018

Amit Mahajan

...Applicant

Versus

Romesh Kumar Goel

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Arora, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Amit Mahajan has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Romesh Kumar Goel, challenging the impugned judgment dated 29.04.2016 passed by learned Judicial Magistrate Ist Class, Panchkula, 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 Amit Mahajan filed a complaint against accused Romesh Kumar Goel under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had friendly relations with the complainant and approached him for a loan of ₹1 lakh,

which was advanced to him. Accused assured to return at the earliest. It is

also the case of the complainant that accused issued cheque bearing No.875370 dated 22.07.2014 amounting to ₹1,00,000/-, 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 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. He denied all the incriminating evidence against him. The accused further stated that he had no friendly relations with the complainant on any occasion nor he obtained any loan from him. He further deposed that he replied instantly to the notice. The cheque in question pertains to his account and he got stopped the payment thereof, as he had apprehension that the complainant might misuse his cheque. The cheque was given to the complainant as he wanted to buy a property and deal was fixed at ₹90 lakhs. The deal was arrived at on oral basis in the office of the complainant. The cheque in question was given as a token, however, deal could not mature. The accused also stated that the complainant refused to return the cheque and then he asked the bank to stop the payment and also issued notice to the complainant. The complainant presented the cheque to the bank for wrongful gain. Accused also examined DW-1 Varun Sahni and DW-2 Sayam Kumar.

Learned JMIC, Panchkula, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated

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.

The perusal of the record shows that in the complaint, no date, month and year has been mentioned as to when the loan was advanced. No particulars of any type have been mentioned in the complaint as to whether the amount was paid in cash or by cheque. There is no averment that at which place and in whose presence the loan was advanced. No receipt or any security document was got executed at the time of advancing the loan. Furthermore, there is no document to show the loan transaction. All these facts support the defence version of the accused.

Moreover, case of complainant is that he has friendly relations with the accused but learned Court below, after discussing the evidence, held that the complainant has no friendly relations with the accused as in cross-examination, the complainant stated that he knew accused since two years but he has also stated that he does not know as to from which department, the accused had retired. Further, he does not know anything

about the family of the accused. He stated that he visited the house of accused once in July 2014 and there was no telephonic conversation between him and accused. Learned Court below held that only link complainant claims to have with the accused is that they met in the park.

Further, I find that accused has replied to the legal notice. He has also given legal notice on 13.09.2014 to the complainant. The payment was got stopped immediately by informing the bank on 22.07.2014. In legal notice Ex.D2, accused mentioned the stance regarding deal taken by him and name of DW-1 is also mentioned. The defence raised by the accused is probable one, which is duly supported by case of the complainant as well as the defence version and therefore, 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 29.04.2016 passed by learned JMIC, Panchkula, 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.

July 31, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No