

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

**CRM No.A-731-MA of 2013 (O&M)**

**Date of decision: October 05, 2018**

Prith Pal Singh

...Applicant

Versus

Dhir Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Sachin Gupta, Advocate  
for the applicant.

Mr.Virender Kumar, Advocate  
for the respondent.

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**INDERJIT SINGH, J.**

Applicant-Prith Pal Singh has filed this application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against respondent Dalbir Singh, challenging the impugned judgment dated 20.10.2011 passed by learned Special Judicial Magistrate, Kurukshetra, 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 Prith Pal Singh filed a complaint against accused Dhir Singh under Section 138/142 of the Negotiable Instruments Act. As per complainant's version, accused had

borrowed money from him and in order to discharge his lawful liability, accused issued a cheque bearing No.701742 dated 08.10.2010 in the sum of ₹1,00,000/-, in favour of the complainant, 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. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him. The defence of the accused is that cheque Ex.C1 contains signature of the accused but accused has given two signed blank cheques, when he had taken of ₹17,000/- from the complainant and had repaid ₹17,000/- to the complainant along with one affidavit.

Learned Special Judicial Magistrate, Kurukshetra, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 20.10.2011.

Aggrieved from the above-said judgment, present appeal along with application for grant of 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.

From the record, I find that, first of all, I find that no date, month and year has been mentioned as to when the loan was given. No other

presence the loan was advanced. No security document was got executed while lending the loan and no receipt has been obtained from the accused. There is no date as to when the amount was demanded back by the complainant. There is no document on record to show the loan transaction. No income tax return has been produced to show lending of amount in question to the accused.

Further, I find that defence of the accused is that he has only taken loan of ₹17,000/- from the complainant and has given two blank signed cheques and when the amount was repaid, he gave one affidavit also. The complainant, in the cross-examination, admitted that he has taken affidavit from the accused after giving loan of ₹17,000/- but complainant has not produced any such affidavit in his evidence. It is admitted that he has given loan of ₹17,000/-, which supports and corroborates the defence raised by the accused. Furthermore, this fact that loan of ₹17,000/- was also given to the accused by the complainant, nowhere pleaded. Moreover, while appearing in the Court, the complainant stated that amount of ₹17,000/- was given to the accused and accused has given the cheque to him, which was dishonoured and later on, accused demanded money as he required the same and complainant gave ₹83,000/- again to the accused. This version of the accused looks improved version. No such facts have been pleaded in the complaint. The admission of the complainant regarding receiving of affidavit and giving loan of ₹17,000/- to the accused shows that defence raised by the accused is probable one and presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused.

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 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 20.10.2011 passed by learned Special Judicial Magistrate, Kurukshetra, 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.

**October 05, 2018**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**

Whether speaking/reasoned

**Yes**

Whether reportable

**No**