

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

**CRM No.A-897-MA of 2013 (O&M)
Date of decision: September 27, 2018**

Harjinder Singh

...Applicant

Versus

In House Marketing (P) Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Ravinder Malik, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Harjinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents In House Marketing (P) Ltd. through its Director Sanjeev Mehendiratta and Sanjeev Mehendiratta, challenging the impugned judgment dated 23.03.2013 passed by learned Judicial Magistrate Ist Class, Panipat, vide which the accused-respondents were 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 Harjinder Singh filed a complaint against accused In House Marketing (P) Ltd. through its Director Sanjeev Mehendiratta and Sanjeev Mehendiratta under Section 138/142 of the Negotiable Instruments Act. As per complainant's version, accused

advanced a loan amount of ₹2,50,000/- to accused No.2 in good faith, who assured to return the same on or before 22.03.2010. In discharge of his liability, accused issued a cheque bearing No.536853 dated 22.03.2010 amounting to ₹2,50,000/- in favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Insufficient Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1. 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 and he denied all the incriminating evidence against him and pleaded his innocence. In defence, accused examined DW-1 Rama, Record Keeper.

Learned JMJC, Panipat, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 23.03.2013.

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.

Notice of the application.

Mr.Ravinder Malik, 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 respondent and contests the same.

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.

Further, from the record, I find that as per case of the complainant, the loan was given to accused No.2-Sanjeev Mehandiratta in personal capacity and it was friendly loan. There is no allegation that loan was given to firm accused No.1. There is also no evidence on record that the amount was given to accused No.1 for its business. Therefore, no liability arises or even claimed by the complainant against accused No.1. At the time of arguments, it is admitted that cheque in question issued by Sanjeev Mehandiratta is from the account of accused No.1 and Sanjeev Mehandiratta is only the Director of that firm, which clearly shows that cheque in question issued by Sanjeev Mehandiratta is not from his personal account, rather, it is from the account of the firm. Therefore, one of the necessary ingredient is missing in the present case.

Furthermore, the complainant has not mentioned any date, month, year as to when the loan was advanced to the accused. No other particulars of any type have been mentioned in the complaint. No receipt or security document was got executed while lending such a huge amount of ₹2.50 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the

anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction.

From the evidence on record, it is clear that there is enmity between the complainant and accused No.2 and firstly, the criminal complaint was filed on 20.01.2010 by the accused against the complainant whereas the cheque is stated to be of 22.03.2010. It is settled law that presumption arises in favour of the complainant, if the cheque is signed by the accused but accused can rebut the presumption by raising probable defence. In the present case, the cheque was not issued from the account of accused; secondly, there is enmity between the complainant and accused; and thirdly, no date, month and year has been mentioned as to when liability arose and no particulars of the liability have been given nor any document is there to show the loan transaction.

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 23.03.2013 passed by learned JMIC, Panipat, 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 27, 2018

Vgulati

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No