

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

CRM No.A-1411-MA of 2016 (O&M)

Date of decision: August 31, 2018

Ravi Parkash

...Applicant

Versus

Janak Raj Duggal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Abhinav Sood, Advocate for
Mr.Vikram Singh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Ravi Parkash has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Janak Raj Duggal, challenging the impugned judgment dated 09.06.2016 passed by learned Sub Divisional Judicial Magistrate, Safidon, 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 Ravi Parkash filed a complaint against accused Janak Raj Duggal under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had borrowed ₹20,00,000/- from him as loan on interest @ 1% per month for business

purpose on 20.08.2012 vide pronote and receipt. Accused repaid the interest amounting to ₹1,33,330/- in cash on 10.03.2013 to complainant and had issued cheque No.115368 dated 11.03.2013 of the borrowed amount of ₹20,00,000/-, in favour of the complainant, for discharging the liability, which on presentation for encashment, was returned back dishonoured with the remarks 'kindly contact drawers'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as PW-1 and proved documents, PW-2 Ajmer singh, Post Master, who proved the postal receipt Ex.C5. Complainant also examined PW-3 Virender Singh, Assistant Manager, PW-4 Punit Tyagi, Assistant Manager and PW-5 Sudhir Kishore, Senior Manager.

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 innocence. In defence, accused examined DW-1 Head Constable Madan Pal, who proved the copy of roznamcha Ex.DW1/A. Accused further examined DW-2 Sudhir Kishore, Senior Manager and DW-3 Constable Amit, who proved the copy of application Ex.DW3/A, copy of register Ex.DW3/B and Ex.DW3/C and photocopy of inquiry Ex.DW3/D.

Learned SDJM, Safidon, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 09.06.2016.

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 findings shows that accused has raised probable defence in the present case, which has been supported and corroborated by the defence evidence and also from the case of the complainant. The accused, to rebut the presumption, has taken the defence that he does not know complainant and he has never visited Safidon prior to the institution of case against him. The perusal of the evidence on record shows that there is no document on record to show that accused earlier also visited Safidon and there is any transaction between complainant and accused. The accused resides at Delhi. The case of the accused is that complainant has prepared forged pronote and receipt in connivance with the witnesses. No witness to the pronote has been brought by the complainant nor any Handwriting and Fingerprint Expert has been examined to show that pronote and receipt are valid documents. Further, no civil suit on the basis of pronote and receipt has been filed so far. DW-1 Head Constable Madan Pal, has proved the DDR report lodged by the accused regarding missing of cheque way back on 09.03.2005. DW-1 further proved the

No.115368, if presented by anybody for encashment, then, he be informed and this account was closed on 25.05.2005. This letter Ex.D1 was also proved on the record. Otherwise also, it looks unnatural that if the pronote and receipt have been executed by the present accused in favour of the complainant, then he must have filed the suit within the period of limitation against the accused but no such step has been taken. Further, after the issuance of notice in this case and after filing of present complaint, a complaint was filed by the accused to the police against the complainant but no action has been taken and it was kept pending till 20.01.2016 as the offence was not committed in the territorial jurisdiction of Delhi.

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 09.06.2016 passed by learned SDJM, Safidon, 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.

August 31, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No