

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

CRM No.A-1789-MA of 2016 (O&M)
Date of decision: November 17, 2018

Rohit Kumar

...Applicant

Versus

Dharminder

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Prabhjot Kaur, Advocate for
Mr.R.S.Virk, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Rohit Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Dharminder, challenging the impugned judgment dated 20.07.2016 passed by learned Judicial Magistrate Ist Class, Sirsa, 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 Rohit Kumar filed a complaint against accused Dharminder under Section 138 of the Negotiable Instruments Act. As per complainant's version, he and accused were having visiting terms and good relations with each other. In June 2012, accused requested him to lend an amount of ₹45,000/-. The said amount was disbursed to the accused, who in discharge of his pre-existing liability,

issued cheque bearing No.237003 dated 20.8.2012, which on presentation

for encashment, was returned back dishonoured with the remarks 'Account closed'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as PW-1, PW-2 Balvinder Singh, Deputy Manager, PW-3 Rajinder Kumar, Clerk and PW-4 Sh.Purshotam Phutela, Advocate. At the close of 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 false implication. In defence, accused examined DW-1 E/ASI Dalbir Singh, who proved Rapat No.240, Ex.DA.

Learned JMIC, Sirsa, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 20.07.2016.

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.

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.

Further, I find that in the complaint, no specific date has been

mentioned as to when the amount of ₹45,000/- was given to the accused. Secondly, the defence of the accused is that his cheque book was lost and he reported the matter to the police and got recorded Rapat No.240, which has been got proved by the accused in his defence by producing DW-1 E/ASI Dalbir Singh. As per the complainant, the loan was given in June 2012 to the accused and cheque was issued on 20.08.2012 but the accused has already got recorded the DDR with the police on 17.03.2012 by stating that his cheque book has been lost. There is no document of any type to show the loan transaction.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the accused has raised probable defence, which is supported and corroborated by the case of the complainant as well as defence evidence.

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 20.07.2016 passed by learned JMIC, Sirsa, 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.

November 17, 2018

Vgulati

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No