

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

CRM No.A-1182-MA of 2017 (O&M)
Date of decision: August 18, 2018

Japnee Kumar

...Applicant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurcharan Dass, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Japnee Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against State of Punjab and other respondents, challenging the impugned judgment dated 10.04.2017 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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 further stated that in case leave to appeal is not allowed, it will cause miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Japnee Kumar filed a complaint against accused Usha Rani and Kewal Krishan under Section 138 of the Negotiable Instruments Act read with Section 420 IPC. As per complainant's version, he deals in gold ornaments and accused have

purchased gold ornaments from him worth ₹2 lakhs on credit and agreed to

make the payment within short period. Complainant requested several times to the accused to pay the said amount but the accused always postponed the matter on one or other false pretext. On persistent request of the complainant, the accused in order to discharge their part of legal liability towards the complainant, issued a cheque bearing No.847854 dated 31.07.2013 amounting to ₹2,00,000/-, in favour of the 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.

Learned JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 10.04.2017.

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.

First of all, present complainant has not mentioned any date,

month or year, as to when the gold was purchased by the accused. There are also no particulars whether the gold ornaments were purchased on one date or on different dates and what were the articles purchased by the accused. The perusal of the record shows that no account book has been produced and proved as per law, to prove the transaction. The transaction itself is doubtful. There are no particulars that in whose presence the gold ornaments were purchased by the accused.

Further, I find that, as per complainant version, gold ornaments worth ₹3 lakhs have been purchased by the accused and he made several requests to the accused to pay the amount but the accused postponed the matter on one pretext or another and then on persistent requests of the complainant, the accused issued the cheque in question, which means that gold ornaments were purchased much before the issuance of the cheque dated 31.07.2013, as per the averments of the complainant. But the complainant has produced the bill Ex.C6 which is dated 31.07.2013. It is nowhere the case of the complainant that a post-dated cheque was given at the time of purchase of articles. Rather, case of the complainant is that after purchasing the gold ornaments, the accused did not pay any amount and postponed the matter on one pretext or another regarding payment and then on persistent demand, the cheque in question was issued, which prima facie shows that this bill Ex.C6 has been created later on. Furthermore, this bill does not find mention neither in the complaint nor in the legal notice nor in the chief examination of the complainant. Rather, this bill has been tendered into evidence.

Learned Magistrate has also given the findings that bill, prima

facie, does not bear the signatures of accused. The defence of accused is

that a blank signed cheque was handed over to Jatinder Kumar as security for repayment of loan of ₹50,000/-. The amount had already been returned but the cheque was misused by the present complainant at the instance of Jatinder Kumar.

Further, I find that presumption under Section 139 of the Negotiable Instruments Act can be rebutted from the case of the complainant itself. The case of the complainant is that gold ornaments were purchased worth ₹3 lakhs and cheque in question of ₹2 lakhs only, was issued to discharge partial liability, which means that ₹1 lakh still remained due. The complainant in cross-examination stated that ₹1 lakh was paid at the time of purchase of gold ornaments, which falsifies whole case of the complainant. The presumption has been duly rebutted by the accused by raising probable defence.

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-respondents have 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 10.04.2017 passed by learned JMIC, Ludhiana, 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 18, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No