

CRM-A-1579-MA-2017

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

**CRM-A-1579-MA-2017 (O & M)
Date of Decision: 01.12.2018**

Raj Kumar

... Applicant

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Arjun Ahmed, Advocate for
Mr. Gaurav Verma, Advocate,
for the applicant.

INDERJIT SINGH, J.

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Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 68 days in filing the application seeking leave to appeal, is condoned.

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Applicant-Raj Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents-State of Haryana and Vanita Rani challenging the impugned judgment dated 01.03.2017 passed by learned Judicial Magistrate Ist Class, Kaithal, vide which respondent No.2-accused 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 further stated that if the leave to appeal is not granted, then the applicant

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will suffer irreparable loss. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that complainant-Raj Kumar filed a complaint against accused-Vanita Rani under Section 138 of the Negotiable Instruments Act. As per the averments made in the complaint, the accused issued a cheque bearing No.936120 dated 04.04.2011 for a sum of ₹7,00,000/- in favour of the complainant to discharge her legal enforceable liability. It is further stated that when the complainant presented the said cheque for encashment, the same was returned back with the remarks ***“Funds Insufficient”***. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In support of his case, the complainant appeared into witness-box as CW 2 besides examining CW 1 Dinesh Kumar, Clerk, OBC Kalayat, CW 3 Chander Parkash and CW 4 Dinesh Kumar. At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and she was confronted with the evidence. She denied all the incriminating evidence against her and claimed herself to be innocent. In her defence, the accused examined DW 1 Surender Kumar, DW 2 Malkiat Singh and DW 3 Jawahar Lal Chawla.

Learned Judicial Magistrate Ist Class, Kaithal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 01.03.2017.

Aggrieved from the above-said judgment, the present appeal alongwith application for grant of leave to appeal has been filed.

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I have heard learned counsel for the applicant and gone through the record.

Perusal of the record especially the impugned judgment passed by the lower Court shows that the findings have been given by the lower Court after appreciating the evidence. 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 the lower Court.

Furthermore, it is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence by the accused. It is the case of accused that blank cheque given for the assurance of selling of plot by her to the complainant has been misused by him (complainant). It is the defence of accused that she and complainant had entered into an agreement to sell dated 28.09.2009 in respect of her house for a sum of ₹50 lakhs and out of which ₹20 lakhs was given by the complainant to her. At that time, no male member of the accused family was present and Malkiat Singh, who was common between the complainant and accused was present there and he asked the accused to issue cheque as the complainant was pressing for blank cheque for the assurance regarding sale. It is also the case of accused that the complainant failed to collect money and on 16.02.2010, the said agreement to sell was cancelled and the complainant had given affidavit as well as writing on the agreement to sell that he has received the total amount of ₹20 lakhs and nothing is pending

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towards the accused. When the accused demanded back her blank signed cheque from the complainant, he lingered on the matter on one pretext or the other and now the said cheque has been misused. The accused has also produced the witnesses i.e. DW 1 to DW 3 to prove the factum of receiving ₹20 lakhs and settling the matter by the complainant. There is no mention anywhere that the complainant has received amount of ₹13 lakhs in cash and ₹7 lakhs by way of cheque in dispute. Further, affidavit and return memo etc. have been duly proved on record by the defence witnesses. This supports the defence version and rebuts the presumption under Section 139 of the Negotiable Instruments Act. Furthermore, the complainant (CW 2) in his cross-examination admitted regarding execution of the agreement to sell dated 28.09.2009 Ex.CF. He also admitted that the agreement was cancelled between the parties. He also denied the execution of affidavit at the time of agreement to sell. During his cross-examination, he stated that he did not remember whether any affidavit was given by him at the time of agreement to sell. He also gave evasive reply that he did not remember whether he has put his signatures on affidavit Mark D-1 dated 16.02.2010 or not. He also admitted that he had received amount of ₹13 lakhs in cash and ₹7 lakhs through cheque. However, it is the case of accused that the complainant had received ₹20 lakhs as per the affidavit. The complainant also stated that he did not remember whether he ever appeared before the Executive Magistrate. He also stated that he did not identify his signatures on Mark A to Mark-E on the documents Ex.D-1 to D-3. The cross-examination of the complainant further supports the defence version.

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Keeping in view the fact that the accused has raised probable defence which is duly supported by the defence evidence as well as from the case of complainant, I find that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

From the perusal of the judgment passed by the Court below, I find that the findings given by the court below are correct, as per evidence and law and the accused has been rightly acquitted. In no way, the impugned judgment can be held as perverse or against the evidence and the same does not require any interference from this Court.

In view of the above discussion, I find that the impugned judgment dated 01.03.2017 passed by learned Judicial Magistrate Ist Class, Kaithal is correct. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

01.12.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No