

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

CRM No.A-1017-MA of 2014 (O&M)

Date of decision: July 24, 2018

Paramjit Kaur

...Applicant

Versus

Rajni @ Rajinder Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek Suri, Advocate
for the applicant.

Mr.Sanjeev Gupta, Advocate
for the respondent

INDERJIT SINGH, J.

Applicant-Paramjit Kaur has filed this application under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent Rajni @ Rajinder Kaur, challenging the impugned judgment dated 27.03.2014 passed by learned Judicial Magistrate Ist Class, Patiala, 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 Paramjit Kaur filed a complaint against accused Rajni @ Rajinder Kaur under Section 138 of the Negotiable Instruments Act and Section 420 IPC. The brief averments of the complaint

as noted by down in the judgment passed by learned JMIC, Patiala, are as under:-

“2. Brief facts as per averments made in the complaint are that the accused borrowed an amount of Rs.3,00,000/-from the complainant and in order to secure the repayment of said loan amount, accused issued a cheque bearing No.726545 dated 16.7.2009 for a sum of Rs.3,00,000/-drawn on Indian Overseas Bank, Patiala in favour of complainant with an assurance that that the cheque was good for payment and would be honoured when presented. Complainant presented the said cheque for encashment through her banker Patiala Central Co-operative Bank Ltd, for collection of amount but it was returned unpaid by the banker of the accused vide memo dated 12.8.2009 with the remarks “Drawer's Signature incomplete/differ”. The accused had reason to believe that the aforesaid cheque will not be honoured by her banker as the accused has issued the said cheque under the signature of Rajni and thus cheated the complainant and committed an offence punishable under Section 138 of Negotiable Instrument Act and 420 of Indian Penal Code. Thereafter through legal notice dated 28.8.2009 sent through registered post accused was called upon to make the payment within the prescribed period of 15 days from the receipt of notice but accused failed to pay the same despite having received the notice. Hence the present complaint. ”

The complainant examined herself as CW-1, CW-2 Gurbachan Singh, CW-3 Puneet Jain, CW-4 Kulwinder Kaur and CW-5 R.V.Vashista, Handwriting and Fingerprint Expert. After the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and she was confronted with the evidence of the complainant. She denied the incriminating evidence against her and pleaded false implication. She further pleaded as under:-

“I am innocent. I have been falsely implicated. The cheque in question has not been issued from an account maintained by me but the same is issued by some one else. The cheque in question does not bear my signatures. The complainant has not advanced any money/amount to me. The complainant has no capacity to advance such a huge amount. The complaint filed by the complainant is false one. No notice was received by me alleged to have been sent by the complainant. ”

In defence, accused examined DW-1 Dr.Inderjit Singh, Handwriting and Fingerprint Expert.

Learned JMIC, Patiala, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 27.03.2014.

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

Notice of motion was issued. Learned counsel for the respondent appeared and contested the application.

Lower Court record was requisitioned.

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

The perusal of the findings given by learned Court below 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.

From the perusal of the record, I find that firstly, it is admitted fact that cheque has not been issued from the account of accused and secondly, the cheque has been dishonoured on the ground that signature incomplete/differ. The cheque has been signed as Rajni whereas the accused is Rajinder Kaur. The cheque is stated to be of her husband. Both the

no date, month and year has been mentioned as to when the liability arose and how it arose. No income tax return or any security document has been produced. There is no document on record to show the liability. There is also nothing to show as to what was the mode of payment i.e. by cash or cheque.

From the record, I find that accused had not been summoned under Section 420 IPC but only under Section 138 of the Negotiable Instruments Act. The perusal of the record shows that cheque has not been dishonoured due to insufficient funds or closure of the account, rather, it has been dishonoured on the ground of signature incomplete/differ. Further, the cheque in question, does not belong to accused but to her husband. All these facts show that ingredients of Section 138 of the Negotiable Instruments Act are not proved in the present case.

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. Therefore, impugned judgment dated 27.03.2014 passed by learned JMIC, Patiala, 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.

July 24, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No