

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

CRM No.A-2395-MA of 2016 (O&M)

Date of decision: August 27, 2018

Harbhajan Singh

...Applicant

Versus

Ravinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.R.Yadav, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Harbhajan Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Ravinder Singh and State of Haryana, challenging the impugned judgment dated 18.10.2016 passed by learned Addl. Sessions Judge, Narnaul, vide which appeal filed by accused-respondent against the judgment of conviction dated 09.12.2014 and order of sentence dated 10.12.2014 passed by learned Judicial Magistrate Ist Class, Mahendergarh, was allowed and he was acquitted of the charge framed against him.

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, the complainant Ravinder Singh filed a

complaint against accused Harbhajan Singh under Section 138 of the

Negotiable Instruments Act. As per the complainant's version, accused borrowed money from him and when the complainant asked the accused to return his amount, then the accused issued a cheque No.920868 dated 07.06.2013 for an amount of ₹10,30,000/-, which on presentation for encashment, was returned back with the remarks 'Insufficient Funds'. Legal notice was issued. When the payment was not made, then the complaint was filed within time.

The complainant examined CW-1 Sanjay, Clerk of OBC, CW-2 Ravinder, Customer Assistant, CW-4 Surender Singh and examined himself as CW-3. At the close of the complainant evidence, the accused was examined under Section 313 Cr.P.C and he was confronted with the evidence of the complainant. He denied the correctness of incriminating evidence and pleaded his innocence. In defence accused examined DW-1 Amit Kumar, Clerk of Sh.Inderpal Singh, Advocate and tendered into evidence copy of reply of legal notice as Ex.DW1/A, certified copy of complaint filed by accused against the complainant and others as Ex.DW1/B, certified copy of list of witnesses in the private complaint as Ex.DW1/C, postal receipt Ex.D1, certified copy of order dated 26.11.2014 Ex.D2.

Learned JMIC, Mahendergarh, after appreciating the evidence, convicted the accused-respondent under Section 138 of the Negotiable Instruments Act, and sentenced him to undergo simple imprisonment for a period of one year and six months and to pay compensation of amount i.e. ₹15,00,000/- to the complainant. An appeal was filed by accused-respondent and learned Addl. Sessions Judge, Narnaul, accepted the appeal

and impugned judgment dated 18.10.2016 and acquitted the accused-

respondent.

Aggrieved from the judgment dated 18.10.2016 passed by learned Addl. Sessions Judge, Narnaul, present application seeking to leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record, especially the judgments passed by the Courts below.

First of all, I find that complainant has not mentioned any date, month, year as to when the loan was advanced to the accused. No other particulars of any type have been mentioned in the complaint. No receipt or security document was got executed while lending such a huge amount of ₹10.30 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction. No income tax return has been produced to show the lending of the amount in question to the accused. Learned Addl. Sessions Judge, Narnaul, has rightly relied upon the law laid in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028.***

Further, as per version of the complainant, cheque Ex.P1 was issued in discharge of liability. As per version in the affidavit Ex.CW1/A, the complainant stated that an amount of ₹10 lakhs was given to Ravinder Singh on 20.11.2012 with condition to be returned with interest @ 2% per annum. The said cheque has been claimed to be issued as part payment on 07.06.2013. The perusal of record shows that no date, month has been

mentioned as to when the amount was given. There is no averment in the

complaint that amount of ₹10 lakhs was advanced. There is no averment that amount was given @ 2% per annum interest. There is also no averment that this cheque of ₹10.30 lakhs has been issued in partial payment of the liability, which means that while appearing in the Court, the complainant has concocted a new version, which is contradictory to the complaint and on this ground also, presumption under Section 139 of the Negotiable Instruments Act stands rebutted.

Further, the complainant deposed in cross-examination that he never recorded any writing either in Bahi or diary or in other form of granting that loan to the accused. Furthermore, the amount of ₹10 lakhs or more was given in cash without getting any security document or even receipt. As per the case of complainant, in cross-examination, he is retired police official and only earning pension, which is not more than ₹20,000/- per month. The complainant also has his own expenses and his family to incur amount of his known source of income.

The perusal of the evidence shows that complainant was not having friendly relations with the accused, rather, he has given the money at the instance of Dharampal, father-in-law of son of the complainant as Dharampal had stated that accused is a nice person but said Dharampal has not been examined in the present case. Further, the accused has raised his defence in the reply to the legal notice but that reply was never controverted through counter reply by the complainant, which means that the defence raised by the accused is probable one. As per defence raised by the accused, he has not borrowed any amount from the complainant nor issued cheque to him. Rather, father-in-law of son of the complainant had granted some loan

him and one of the said cheques, has been used by the complainant in the present case.

From the perusal of record, I find that the findings given by learned lower Appellate Court, while acquitting the accused-respondent are correct, as per law and evidence. The evidence has been re-appreciated in right perspective. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by learned lower Appellate Court. In no way, the findings given by learned Addl. Sessions Judge, Narnaul, can be held as perverse or against the law.

In view of the above discussion, I find that the impugned judgment dated 18.10.2016 passed by learned Addl. Sessions Judge, Narnaul, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

August 27, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No