

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

**CRM No.A-1131-MA of 2015 (O&M)
Date of decision: July 31, 2018**

Ombir

...Applicant

Versus

Aman Chopra

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bijender Dhankar, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Ombir has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent Aman Chopra, challenging the impugned judgment dated 13.05.2015 passed by learned Judicial Magistrate Ist Class, Sonapat, 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 Ombir filed a complaint against accused Aman Chopra under Section 138 of the Negotiable Instruments Act. As per complainant's version, he has friendly terms with the accused, on the basis of which, accused approached him and requested for friendly

loan of ₹3 lakhs. On good faith, complainant gave loan of ₹3 lakhs to the accused at his residence. In discharge of this liability, accused issued a cheque bearing No.262724 dated 14.09.2011 amounting to ₹3 lakhs, which on presentation for encashment, was returned back dishonoured with the remarks 'insufficient funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1, CW-2 Jai Karan and CW-3 Lilu Ram and closed the evidence. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C and he was confronted with the evidence. He denied all the incriminating evidence against him and pleaded false implication. The accused further deposed that disputed cheque was kept by the complainant as security whereas, he never took loan of ₹3 lakhs from him and the cheque has been misused by the complainant upon failure of their business. In defence, accused examined himself as DW-1.

Learned JMJC, Sonapat, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 13.05.2015.

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

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.

The perusal of the record shows that in the complaint, no date, month and year has been mentioned as to when the loan was advanced. No particulars of any type have been mentioned in the complaint as to whether the amount was paid in cash or by cheque. There is no averment that in whose presence the loan was advanced. No receipt or any security document was got executed at the time of advancing the loan. Furthermore, there is no document to show the loan transaction. All these facts support the defence version of the accused.

The version of the accused is that he has been in the business of sale of eggs for the last 10 years whereas the complainant does the work of finance and complainant's office is near to his shop. The complainant used to give money as loan. The accused further stated that he borrowed an amount of ₹75,000/- from the complainant, which he had already returned with interest, total amounting to ₹1 lakh. He also stated that the complainant had obtained a blank cheque from him in the form of security and even after repaying the whole amount, the complainant had misused the cheque, whereas he has no liability to make any payment towards the complainant.

The perusal of the record shows that there is no document to show the loan transaction. The complainant, in his statement, has stated that he has lent the amount in presence of his nephew and wife but they have not been examined. Such a huge amount of ₹3 lakhs was advanced but no

on the record to show as to when the loan was demanded back by the complainant from the accused. As per law laid down in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 102***, all these facts are fatal to the complainant's case.

Learned Court below further from the evidence has held that complainant could not depose about family members of the accused, which is quite unconvincing that complainant will give such a huge amount without obtaining any document. The complainant further stated that he gave money to the accused as he has sold his buffalo and has borrowed money from his nephew. Again, this looks unnatural that a person will lend the amount to other person without interest, after himself borrowing the money from some other person. It is settled law that presumption is in favour of a person who holds the cheque in due course that it has been given for discharge of legally enforceable debt/liability but this presumption can be rebutted by raising probable defence. In the present case, accused has raised probable defence, which is duly supported by the defence version as well as from the case of the complainant itself. Therefore, 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 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 13.05.2015 passed by learned JMIC, Sonapat, is correct, as per law and evidence and does not require any interference from this Court.

application stands dismissed.

July 31, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No