

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

CRM No.A-362-MA of 2016 (O&M)

Date of decision: August 06, 2018

Mohinder Lal

...Applicant

Versus

Des Raj

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Khehar, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Mohinder Lal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Des Raj, challenging the impugned judgment dated 18.11.2015 passed by learned Judicial Magistrate Ist Class, Karnal, 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 Mohinder Lal filed a complaint against accused Des Raj under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused was having friendly relations with him and was in dire need of money. Accused approached him to lend

of ₹2 lakhs to the accused, which the accused promised to return after four months. In order to discharge his legal liability, accused issued an account payee cheque bearing No.450647 dated 24.05.2013 for a sum of ₹2,00,000/-, which on presentation for encashment, was returned back with the remarks 'Account closed'. 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 Dinesh Kumar, Clerk, PNB and CW-3 Anil Kumar, Officer in ICICI Bank 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 of the complainant. He denied the correctness of the evidence and pleaded his innocence. In defence, accused examined DW-1 R.P.Munjhal, Advocate, who tendered his affidavit Ex.DW1/A and accused tendered documents Ex.D2, copy of legal notice and Ex.D3, Postal receipt.

Learned JMJC, Karnal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 18.11.2015.

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

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.

Further, from the perusal of the record, I find that the case of the accused is that he had borrowed a sum of ₹50,000/- from the son of the complainant namely Vishal Chopra @ Prince on 16.01.2009 and had given the blank cheque in question as security to him. Thereafter, he paid ₹60,000/- as full and final settlement of the claim in the year 2012 but the said cheque was not returned. Rather, it was held to be misplaced by son of the complainant, in which regard, legal notice dated 15.03.2012 Ex.D2 was also sent to the son of the complainant, whereupon, no reply was sent by him. Rather, the cheque in question has been misused by the complainant by filling his own name and present complaint has been filed.

The perusal of the record shows that accused examined DW-1 R.P.Munjhal, Advocate, who has proved the legal notice Ex.D2, which was sent on 15.03.2012, much prior to the advancement of loan in this case. It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, when the accused has already sent the legal notice to son of the complainant regarding return of the cheque in question, which was stated to be given to him as security, then there is no reason or ground to lend money afterwards by complainant, who is father of Vishal Chopra @ Prince. There is no document on record to show this loan transaction. No security document or receipt etc. has been taken from the accused at the time of lending the amount. Further, the accused has placed on record certified

copies of complaints filed by Vishal Chopra @ Prince, son of present

complainant, which shows that he has filed so many complaints against other persons, copies of which are Ex.D3 to Ex.D10. This fact also supports the version of the accused that he has borrowed the money from son of the complainant. Keeping in view the above facts, I find that presumption has been duly rebutted by the accused.

Learned counsel for the applicant argued that there is no evidence to show that loan was returned to son of the complainant. On this argument, I find that transaction with son of the complainant is not in question in the present case. The son of the complainant is not a party in this case. The accused has also proved legal notice Ex.D2 given to son of the complainant showing return of money, which was borrowed from him. Therefore, there was no necessity to prove the return of loan to son of the complainant.

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 18.11.2015 passed by learned JMIC, Karnal, 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 06, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No