

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

CRM No.A-365-MA of 2016 (O&M)

Date of decision: August 27, 2018

Raj Pal Singh

...Applicant

Versus

Ramesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Arya, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Raj Pal Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ramesh Kumar, challenging the impugned judgment dated 05.12.2015 passed by learned Judicial Magistrate Ist Class, Gurdaspur, 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 Raj Pal Singh filed a complaint against accused Ramesh Kumar under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Gurdaspur, are as under:-

“2. *The allegations made in the complaint are that accused*

withheld the salary of complainant and after many requests, accused issued a cheque bearing No.363820 dated 31.03.2010 amounting to ₹27,534/- in favour of complainant, payable at State Bank of India, Gurdaspur with an assurance that same will be honoured on its presentation but when the cheque was presented by complainant for collection and encashment to his banker i.e. Central Bank of India, Old Sabzi Mandi, Gurdaspur, the same was returned back unpaid with memo dated 15.05.2010 issued by the State Bank of India, Gurdaspur and delivered to complainant vide memo dated 15.05.2010 mentioning the reasons "Insufficient Funds". Thereafter a legal notice dated 28.05.2010 was sent to accused to make the payment which was received back with remarks "not met". Despite notice accused failed to make payment to complainant. Hence, the present complaint."

The complainant examined himself as CW-1 and placed on record documents i.e. original cheque, memo, legal notice, postal receipt and acknowledgment. At the close of the complainant evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant. He denied all the incriminating evidence against him and pleaded his false implication. He further pleaded as under as noted down in the impugned judgment:-

"XXX.....he was working as Forest Range Officer, Wild Life Range at Pathankot. The cheque in question was issued to complainant by him in his official capacity. The cheque was issued to complainant for his salary. Complainant presented the cheque in question with his bank but the cheque was dishonoured by bank because the bank authorities due to an entry of ₹1,000/- for account keeping fees. Therefore, accused himself moved an application to the bank that bank has illegally deducted ₹1,000/- on account of some charges and due to that the cheque in question has been dishonoured. The bank rectified its mistake and reversed the entry of ₹1,000/-. Accused informed the complainant that he can again present the cheque with his bank for encashment but complainant did not present the cheque for encashment rather threatened to file case against him. Accused is not at fault and bank authorities are to be blamed for dishonouring of cheque."

In defence, accused examined DW-1 Ashwani Kumar and DW-

2 Tarlok Singh.

Learned JMIC, Gurdaspur, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 05.12.2015.

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 as well as impugned judgment shows that admittedly, the cheque in question was a salary cheque of the complainant issued by Rakesh Kumar, Forest Range Officer while performing and in discharge of his official duties. The cheque in question is a salary cheque and Rakesh Kumar, Forest Range Officer is not under any debt or liability to pay the salary. He has issued the cheque of salary on behalf of the government or department. State Government is not a party in the present case.

The presumption under Section 139 of the Negotiable

Instruments Act can be rebutted by the accused. In the present case,

accused has rebutted the presumption from the evidence of the complainant itself and it was a salary cheque and has not been issued by the accused for his personal liability. As already discussed, accused was not under any liability/debt to pay the salary. It is the State Government or department. The accused has simply issued the cheque while discharging the official duties. Secondly, I find that the cheque was issued from the government department account and not from personal account of the accused, which means that the cheque was not from the drawer's account, which is a necessary ingredient under Section 138 of the Negotiable Instruments Act.

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 05.12.2015 passed by learned JMIC, Gurdaspur, 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 27, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No