

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

CRM No.A-2046-MA of 2017 (O&M)

Date of decision: November 19, 2018

Babu Ram Panchal

...Applicant

Versus

Sunil Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Suresh Kumar Kaushik, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Babu Ram Panchal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sunil Kumar, challenging the impugned judgment dated 03.08.2017 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 Babu Ram Panchal filed a complaint against accused Sunil Kumar under Sections 138 and 142 of the Negotiable Instruments Act. As per complainant's version, accused was having friendly relations with him and borrowed an amount of ₹5 lakhs

from him on different occasions. In discharge of his legal liability, the

accused issued cheque bearing No.930779 dated 12.08.2016 for ₹5 lakhs in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Opening balance insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1 and tendered into evidence, cheque deposit slip and original cheques Ex.C1 and C2, return memo Ex.C3, copy of legal notice Ex.C4, postal receipt Ex.C5 and registered envelope with acknowledgment Ex.C6 and C7. At the close of complainant evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him and pleaded his innocence and false implication. In defence, accused examined himself as DW-1 and tendered into evidence legal notice Ex.D1 sent through registered envelope Ex.D2. It is the case of the accused that complainant deals in the business of committee. He is the head of the committee business. He was also a committee member in the committee run by the complainant. It is further the case of the accused that whenever the complainant used to make any person a member of his committee, he used to take blank cheques as security from him and he (accused) has also issued cheque as security to him. The cheque in question was also a security cheque which has been misused by the complainant against him because one of the members of the committee committed default and has absconded and the complainant has stated that the loss occurred due to the default committed by the absconding member shall be borne by each member but when accused refused to do so,

the complainant has misused his security cheque.

Learned JMIC, Karnal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 03.08.2017.

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.

From the perusal of the record, I find that the complainant has not mentioned any date, month, year as to when the liability arose. 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 ₹5 lakhs to the accused. As per complainant, ₹5 lakhs was given on different dates but no date, month and year has been mentioned. Furthermore, there is no document to show the loan transaction. There is nothing as to when the amount was demanded back. No income tax record has been placed on record to show the loan transaction nor account books or any diary maintained by the complainant regarding this loan transaction has

another, 2013(1) RCR (Criminal) 1028, all these facts are fatal to the case of the complainant.

Furthermore, the accused has appeared in the witness box as DW-1 and has proved the legal notice. 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, the accused has raised probable defence, which is supported and corroborated by the defence evidence.

From the record, I find that complainant has stated in his cross-examination that he is not even aware about the family of the accused. He is not even aware as to whether he is a literate or illiterate person. He has never visited his house. Learned trial Court held that from this cross-examination, it cannot be held that accused has any kind of friendly relations with the complainant. Furthermore, the complainant has stated that he has given half of the money alone and half of the money in the presence of Billu but Billu was not examined in this case, who was the best witness to corroborate the case of the complainant. Moreover, the complainant in the cross-examination has stated that he is a labourer and earns ₹600/- per day as daily wages. If that is the case, then such a huge amount cannot be lent by the complainant to the accused, to whom he was not knowing and further without obtaining any receipt or security document etc.

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 03.08.2017 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.

November 19, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No