

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

CRM No.A-1544-MA of 2015 (O&M)

Date of decision: July 24, 2018

Jagtar Singh

...Applicant

Versus

Danial Bhatti

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Aulakh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Jagtar Singh has filed this application under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent Danial Bhatti, challenging the impugned judgment dated 10.08.2015 passed by learned Judicial Magistrate Ist Class, Moga, 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 further stated that if leave to appeal is not granted, the complainant will suffer irreparable loss. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Jagtar Singh filed a complaint against accused Danial Bhatti under Sections 138 and 142 of the Negotiable

Instruments Act. The brief averments of the complaint as noted by down in

the judgment passed by learned JMIC, Moga, are as under:-

“The facts so envisaged in the complaint on the force of which the complainant aspires to secure the conviction of the accused are that in the month of July 2012, the accused had borrowed a sum of Rs.10,00,000/- from the complainant for the purchase of a plot measuring 3 Kanals located in village Kannian Khas, Tehsil Dharamkot District Moga. In order to discharge his legal liability, the accused issued a cheque No. 107383 dated 24.6.2013 for amount of 10,00,000/- in favour of the complainant, drawn on his bank account at Axis Bank, Moga. On the presentation of the cheque, it was dishonoured with the remarks 'Funds insufficient', through memo dated 27.8.2013 and the complainant received a corresponding notification on 31.8.2013. A notice of demand was thereafter issued by the complainant on 02.09.2013 upon the accused but the accused failed to pay the demanded amount. Ultimately, the present complaint was filed.”

The complainant examined himself as CW-1 and closed his evidence. After the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant. He denied the incriminating evidence against him and pleaded his innocence. In defence, accused examined 9 witnesses.

Learned JMIC, Moga, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 10.08.2015.

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

Lower Court record was requisitioned.

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the findings given by learned Court below 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 in the present case, complainant has advanced ₹10 lakhs in the month of July 2012, but no date has been mentioned on which this amount has been paid. There is no document on record to show this loan transaction. Further, there is nothing on the record as to whether this amount has been paid in cash or by cheque and in whose presence and at which place. Nothing is there whether this amount was lying in the house or the same was withdrawn from the bank. This amount has not been shown in the income tax return nor any such return has been placed on the record. There is also nothing whether any interest was to be paid on this amount or not. No receipt was taken at the time of advancing ₹10 lakhs. It is nowhere the case of the complainant in the complaint that a pronote and receipt has been executed by the accused at the time of borrowing ₹10 lakhs. When appeared in the witness box, the complainant propounded new version that accused executed pronote and receipt and handed over the same to the complainant and when the cheque was given by the accused, he returned pronote and receipt to accused. No copy of pronote and receipt has been placed on record. No evidence has been produced by bringing any witness to the receipt or scribe of the pronote etc. and further, this version has not been taken in the complaint and it is a material improvement.

Furthermore, the complainant has stated that he has friendly

relations with accused. If there are friendly relations, then there is no need for getting executed pronote and receipt. Further, the accused examined DW Anil Kumar, Handwriting and Fingerprint Expert, who gave opinion that body of the cheque is in different hand and not in the hand of accused, which supports the version of the accused that cheque was blank.

The defence of the accused is that he had ongoing litigation with Palwinder Singh. One Jaswinder Singh got the matter settled and two blank cheques were given as security, which were stolen by the complainant from the house of Jaswinder Singh. It is also stated that on discovering the theft, Jaswinder Singh lodged a complaint on 27.09.2013. ASI Dharam Singh has been examined as defence witness, who brought the photocopy of the complaint from the police station. Furthermore, the accused has also produced the evidence i.e. affidavit executed by Palwinder Singh etc., copies of civil litigation with Palwinder Singh and suit which was withdrawn on the basis of compromise and statement suffered by Palwinder Singh in the Court. All these documents support and corroborate the version of the accused.

To rebut the presumption under Section 139 of the Negotiable Instruments Act, the accused is to raise probable defence. In the present case, the accused has raised probable defence, which is supported and corroborated by evidence of the complainant as well as defence evidence.

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 10.08.2015 passed by learned JMIC, Moga, 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.

July 24, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No