

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

CRM No.A-662-MA of 2016 (O&M)

Date of decision: August 31, 2018

Munish Kumar Aggarwal

...Applicant

Versus

Sat Guru Timber and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.C.Shahpuri, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Munish Kumar Aggarwal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Sat Guru Timber and State of Haryana challenging the impugned judgment dated 30.01.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 applicant will suffer irreparable loss, in case, leave is not granted. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Munish Kumar Aggarwal filed a complaint against accused Sat Guru Timber through its proprietor Tej Pal

version, accused had issued a cheque bearing No.079900 dated 04.03.2013 in the sum of ₹2,50,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'Funds 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 his affidavit Ex.CW1/A and proved documents; original cheque Ex.C1, return memo Ex.C2, copy of legal notice Ex.C3, postal receipt Ex.C4 and unclaimed envelop Ex.C5.

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 innocence. He further stated that he had never issued any cheque to the complainant and he has no legal existing liability towards the complainant. He also alleged that complainant has misused the cheque in question in collusion with one Jasbir.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 30.01.2016.

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

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 no date, month, year has been mentioned regarding arising of liability. No particulars regarding liability have been mentioned that at which place and in whose presence, the amount was given. There is no document on record that any receipt or security document was got executed from the accused. There is no document on record to show this loan transaction. Furthermore, at the time of evidence, the complainant stated that he has friendly relations with Tej Pal, therefore, he gave loan to Tej Pal in the end of February 2013. It also looks unnatural that if the loan was given in the end of February 2013, then the accused would issue cheque in discharge of liability just after some days i.e. on 04.03.2013. Furthermore, in the present case, Sat Guru Timber, is a firm, owned by Tej Pal, which means that transaction of complainant was with the firm but the complainant cannot have any friendly relations with the firm. Secondly, if it was a friendly loan given to Tej Pal, then he should have been the accused in the present case but firm has been made as accused through Tej Pal. Admittedly, there was no transaction of any type with the firm, however, cheque has been issued from the account of firm and not from the personal account of Tej Pal.

Keeping in view the facts and circumstances of the present case, I find that there is nothing as to when the demand was raised to return the loan or when the amount in question was paid to Tej Pal. There is also

nothing on the record, whether this amount was lying with the complainant at home or he withdrew the same from the bank. What was the existing liability and how it arose, it is neither in the complaint, nor in the preliminary evidence, nor in the legal notice nor in examination in chief of the complainant and even complainant failed to show that any kind of relation between him and accused. No income tax return has been produced to show this transaction 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 30.01.2016 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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 31, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No