

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

**CRM No.A-688-MA of 2016 (O&M)
Date of decision: November 17, 2018**

Ravinder Singh

...Applicant

Versus

Sri Sai Apparels and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Parminder Singh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Ravinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Sri Sai Apparels and other respondents, challenging the impugned judgment dated 06.02.2016 passed by learned Judicial Magistrate Ist Class, Karnal, vide which the accused-respondents were 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 shall suffer irreparable loss and injury if the leave is not granted. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Ravinder Singh filed a complaint against accused Sri Sai Apparels through its partner, Munish Sabharwal and Daljit Singh under Sections 138 and 142 of the Negotiable Instruments Act. As per complainant's version, he and accused were having

friendly/family relations. Accused No.2 and 3 borrowed a sum of ₹4 lakhs

in the first week of May 2012 on friendly basis with promise to return the same in the month of June 2012. When the complainant demanded money back, accused No.2 and 3, in discharge of their legal liability, issued two cheques amounting to ₹2 lakh each bearing No.210087 and 210090 dated 15.06.2012 and 15.07.2012 respectively, which on presentation for encashment, were returned back dishonoured with the remarks 'Payment stopped by the drawer'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined CW-1 Ram Lal, Asstt. Manager, CW-3 Sumit Kumar, BDE and this witness was examined in chief only, CW-4 Kanwaljeet BDE and complainant examined himself as CW-2. At the close of complainant evidence, accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the complainant and they denied all the incriminating evidence against them and pleaded their innocence and false implication. In defence, accused Munish examined himself as DW-1 and took the defence that complainant has failed to prove the existence of legally recoverable debt and liability against the accused-persons and complainant was also partner in the firm of the accused and some blank cheques were stolen by the complainant with regard to which, a missing report was also lodged with the police in the year 2009

Learned JMJC, Karnal, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 06.02.2016.

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

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.

Further, I find that in the complaint, no specific date has been mentioned on which the loan has been given. It is simply written that in the first week of May 2012 ₹4 lakhs was advanced as friendly loan. The cheques in question are dated 15.06.2012 and 15.07.2012. The perusal of the record shows that accused Munish examined himself as DW-1 and he tendered into evidence partnership deed Ex.D1, MOU Ex.D2, application moved to SHO dated 01.09.2009 Ex.D3, postal receipt, reply to legal notice Mark-A, application to stop payment dated 03.09.2009 Mark-B, statement of account, copy of civil suit.

The perusal of the evidence on record shows that there is no document on record of any type to show the loan transaction. Further, CW-4 Kanwaljeet has produced on record application given by the accused to the bank on 03.09.2009 for stopping the payment of the cheques including the cheques in dispute on the ground that same have been missing and has also produced an application given to SHO to lodge report in this regard. In view of this evidence that application was already given to police in

the payment in the year 2009, then, question of issuance of cheques in question, after three years, does not arise. It is specifically stated by CW-4 that payment of the cheques was stopped including the cheques in dispute in the year 2009. There is no document on record to show that when partnership was dissolved and present complainant ceased to be partner. The copy of the partnership deed has been duly proved by the accused. Furthermore, the complainant has given the loan to the firm and its partners but without interest, which looks doubtful.

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 case 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-respondents have 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 06.02.2016 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 17, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No