

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

CRM No.A-799-MA of 2016 (O&M)

Date of decision: August 27, 2018

Daljit Singh

...Applicant

Versus

Mohinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gopal Sharma, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Daljit Singh has filed this application under Section 378(4) read with Section 372 Cr.P.C. seeking permission for leave to appeal against respondent Mohinder Singh, challenging the impugned judgment dated 28.01.2016 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, 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 Daljit Singh filed a complaint against accused Mohinder Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused borrowed an amount of ₹4 lakhs from him in the month of September 2010 and ₹5.80

lakhs in the month of June 2011 and in discharge of his legal liability,

accused issued cheque bearing No.586024 dated 17.11.2011 for an amount of ₹9,80,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'Insufficient Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself, Dipu Kumar, Sandeepal Singh, Navdeep Gupta, Daljit Singh and Baljit Singh. 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. In defence, accused examined DW-1 Rajesh Kumar @ Deepak, DW-2 Darshan Singh, DW-3 Amritpal Singh, DW-4 Darbara Singh, DW-5 Amandeep Singh, DW-7 Buta Singh and examined himself as DW-6.

Learned JMIC, Fatehgarh Sahib, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 28.01.2016.

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 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, as to when the loan was advanced to the accused, though, month and year have been mentioned. 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 ₹9.80 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction. No income tax return has been produced to show the lending of the amount in question to the accused. The lending of loan has not been shown in the account books or in the income tax return which has been filed in the name of firm.

Learned Court below held that in the present case in the absence of any written loan document, it cannot be believed that the complainant advanced such a huge sum that too without any stipulation as to interest. It is the case of the accused that cheque in question was blank when it came into the hands of the complainant and he filled up the same without any authority in the absence of existence of any enforceable legal debt. In fact, the said cheque was lying with the complainant as accused is selling his crops with him and the complainant, who is in business of money lending, has obtained said blank cheque as a security and has failed to return the same after due payment and has now misused the said cheque.

his cross-examination that he used to lend money to people and used to compromise the matter for lesser amount. If that is the case, then definitely, the complainant is maintaining the record, otherwise, he cannot remember as to who has returned how much money but he intentionally has not placed on record any document, which means that adverse inference is to be drawn against the complainant that if that record is produced before the Court, it may not support his case. The complainant stated that amount was advanced entirely by way of cash and said amount was not withdrawn from the bank.

Keeping in view the facts and circumstances and the fact that accused was selling the crop on the shop of the complainant, therefore, complainant is maintaining the accounts but there being no document on record to show the transactions and further, statement of complainant that he earlier filed one case against Hardip Singh claiming an amount of ₹2,85,000/- and he later compromised the matter for ₹20,000/- etc., further supports the defence version. The presumption under Section 139 of the Negotiable Instruments Act, in this case has been duly rebutted by the accused by raising probable defence, which is duly supported and corroborated from the case of complainant itself as well as the 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

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.

As the main case is decided, therefore, criminal misc. application, if any, also stands disposed of.

August 27, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No