

CRM-A-2339-MA-2017

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

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Date of Decision:30.11.2018

Jaswant Sehgal

... Applicant

Versus

Sanjay Madaan

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Sanjiv Gupta, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant-Jaswant Sehgal has filed this application under Section 378(4) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') seeking leave to file an appeal against the judgment dated 23.08.2017 passed by learned Judicial Magistrate Ist Class, Karnal, vide which respondent-accused Sanjay Madaan was acquitted of the charges framed against him.

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 findings of the trial Court are based on surmises and conjectures. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant-Jaswant Sehgal filed a complaint against accused Sanjay Madaan under Section 138 of the

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Negotiable Instruments Act(for brevity, 'N.I.Act'). In brief, the complaint has been filed with the averments that the accused and complainant are Wine Contractors for the last so many years. In the year 2013, the accused and complainant gave a bid for taking wine contract from the office of DETC (Excise) Karnal and for that purpose, the complainant deposited ₹40 lakhs. It has been further stated that the complainant was not successful in getting the highest bid of the wine contract from the office of DETC, Karnal, whereas the accused remained successful in getting the wine contract being the highest bidder. On this, the accused told the complainant that he is not in a position to deposit the remaining bid amount with the concerned department and requested the complainant to get the amount of ₹40 lakhs transferred in his account so that the remaining bid amount be deposited in his account with the office of DETC, Karnal. He assured the complainant that amount of ₹40 lakhs shall be treated as a friendly loan and he agreed to pay interest @ 1.5% per month. Thereafter, the complainant transferred the amount of ₹40 lakhs in the account of the accused. After admitting the liability, the accused issued three cheques bearing No.068058 to 068060 dated 17.08.2015 & 25.08.2015 of ₹15 lakhs each in favour of the complainant. However, the cheques on presentation for encashment, were returned back with the remarks “*Payment stopped by the drawer*”. Legal notice was served. When the amount was not paid, the complaint was filed within time.

The complainant examined himself as CW1 and tendered into evidence documents Ex.C-1 to C-20. At the close of complainant's

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evidence, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence, which he denied and pleaded his innocence. He has also taken the defence that he had never given the cheques in dispute to the complainant. Some of his blank signed cheques were lost including the cheque in question and in this regard, a DDR dated 03.08.2015 has been lodged with Police Post Sector-6, Karnal. The complainant has misused the cheques in question and has filed the present false complaint against him. Moreover, in his defence, the accused examined as many as four witnesses. DW 1 Shaminder Kumar Chauhan proved income tax returns for the assessment years 2014-15 and 2015-16 as Ex.D-1 and D-2. DW 2 Kuldeep Singh proved DD No.19 as Ex.DW 2/A. DW 3 Karam Singh, Clerk, O/o Excise & Taxation, District Karnal tendered detail of group/vends allotted to the accused for the financial year 2013-13 and 2014-15 as Ex.DW 3/A.

Learned Judicial Magistrate Ist Class, Karnal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 23.08.2017.

Aggrieved from the abovesaid judgment, the present appeal alongwith application for grant of leave to appeal has been filed.

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

Perusal of the record shows that the accused has raised the defence regarding loss of cheques in question and proved DDR dated 03.08.2015, whereas the case of complainant is that three cheques dated 17.08.2015 and 25.08.2015 were given by the accused. The defence raised

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by the accused is supported and corroborated by the documentary evidence i.e. DDR dated 03.08.2015. When the accused has already got the DDR registered regarding loss of cheques in question, then it looks unnatural that after 14-15 days, he will issue cheques to the complainant. It is not the case of complainant that these cheques were given earlier and the same were post-dated cheques. The defence raised by the accused is probable one and the same is duly supported by the documentary evidence. The presumption under Section 139 of the N.I.Act can be rebutted by raising probable defence. In the present case, the accused has raised the probable defence which is duly supported and corroborated by the documentary evidence.

Otherwise also, I have gone through the findings given by the trial Court. In no way, the findings of court below 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 the court below.

From the perusal of the judgment passed by the court below, I find that the findings have been given by appreciating the evidence in right and proper perspective and the accused-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 23.08.2017 passed by learned Judicial Magistrate Ist Class, Karnal is correct, as per evidence and law and the same does not require any

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interference from this Court. No ground is made out for granting leave to file appeal and, therefore, the present application stands dismissed.

30.11.2018
parveen kumar

(INDERJIT SINGH)
JUDGE

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No