

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

CRM No.A-827-MA of 2018 (O&M)

Date of decision: November 19, 2018

Birender Singh

...Applicant

Versus

Mahipal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ram Avtar Yadav, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Birender Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mahipal Singh, challenging the impugned judgment dated 01.02.2018 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 Birender Singh filed a complaint against accused Mahipal Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, he and accused are well known to each other. Accused was in need of money for his personal

use and approached the complainant and borrowed a friendly loan of

₹13,50,000/- from him on different dates i.e. ₹5 lakhs on 13.12.2013, ₹2 lakhs on 03.01.2014 and ₹6.5 lakhs on 10.01.2014 and promised to return the said amount within six months. After the expiry of stipulated time, the complainant demanded the said amount back and after admitting his liability, the accused issued cheque No.120141 dated 19.06.2014 for ₹13,50,000/- in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Account Closed'. 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, original cheque Ex.C1, return memos Ex.C2 and C3, legal notice Ex.C4 and postal receipt Ex.C5. On the other hand, accused tendered into evidence Daily Diary report as Ex.D1.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 01.02.2018.

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.

Further, I find that in the complaint, three dates have been mentioned on which the loan amount has been disbursed but there is no document of any type to show the loan transactions. The cheque in question is dated 19.06.2014 and it has been returned with the remarks 'account closed'. The DDR report Ex.D1, which was got registered on 18.04.2014 by the accused shows that accused has reported to the police regarding loss of cheque book on 16.04.2014, containing the cheque in question also. This DDR report is much before the date of issuance of the cheque in the present case.

The defence of the accused is probable one and has been duly supported and corroborated from the DDR report. On the other hand, there is no document of any type on the record to show the loan transaction nor there is any other witness to support and corroborate the complainant version. In view of the above facts, I find that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence. Furthermore, a huge amount of ₹13.50 lakhs has been given but without obtaining any receipt or security document. This amount has also not been mentioned in the income tax return.

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 01.02.2018 passed by learned JMIC, Faridabad, 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 19, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No