

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

CRM No.A-1786-MA of 2014 (O&M)

Date of decision: July 17, 2018

Lalit Kumar

...Applicant

Versus

Daya Shankar Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Shiv Kumar, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Lalit Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Daya Shankar Gupta, challenging the impugned judgment dated 17.09.2014 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 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 Lalit Kumar filed a complaint against accused Daya Shankar under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused is well known to

him. Accused borrowed a friendly loan of ₹74,690/- from the complainant

in the month of January 2012 for his personal use and promised to repay the same within a period of six months. In order to discharge his liability, accused issued cheque bearing No.264769 dated 16.07.2012 amounting to ₹74,690/-, in favour of the complainant, 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 closed his evidence. The accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant. He denied the incriminating evidence against him and pleaded false implication.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 17.09.2014.

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

Lower Court record was requisitioned.

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.

The perusal of the record shows that firstly, no date has been mentioned on which the amount has been lent by the complainant, rather it is simply written that in the month of January 2012, the loan was given. Secondly, it looks unnatural that a person would borrow ₹74,690/- for his personal use and complainant would lend ₹74,690/-. So, this version of the complainant also looks doubtful. Thirdly, there is no document on record to show the loan transaction. It is stated by the complainant in cross-examination that loan was paid in the presence of his mother, father and one Durga Parshad, but none of them, has been examined. The accused has taken the plea that he has lodged a complaint with the local police regarding loss of the cheque.

Further, I find that legal notice issued to the accused is not signed by the complainant nor by his counsel, therefore, that is not a valid legal notice. The contents of legal notice cannot be authenticated from anybody as it has not been signed by the complainant or his counsel. Rather, legal notice is without signatures. So, it cannot be held that legal notice is valid. Learned Magistrate, has also discussed the law on this point in the impugned judgment. Furthermore, in the cross-examination, the complainant stated that cheque in question was given to him as security at the time of advancement of loan. It is not the case of the complainant in the complaint that any post dated cheque was given to him at the time of advancement of loan. Rather, perusal of the complaint shows that cheque was given after about six months of advancement of loan.

From the perusal of evidence on record, I find that presumption

by raising probable defence, which is supported by case of the complainant as well as defence of the accused.

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 17.09.2014 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.

July 17, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No