

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

CRM No.A-972-MA of 2016 (O&M)

Date of decision: October 16, 2018

Ritesh Kumar

...Applicant

Versus

Naina Maadan

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajesh Bansal, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.35775 of 2018

The application is allowed, subject to all just exceptions.

Annexures A-1 and A-2 are taken on record.

CRM No.A-972-MA of 2016

Applicant-Ritesh Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Naina Maadan, challenging the impugned judgment dated 10.03.2016 passed by learned Judicial Magistrate Ist Class, Panipat, 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 Ritesh Kumar filed a complaint against accused Naina Maadan under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused is neighbour of father-in-law of complainant. Complainant and accused were having good relations and visiting terms. Accused borrowed a sum of ₹9 lakhs dasti from time to time from him for a short span of time and promised to return the said amount on demand. Said ₹9 lakhs was given to accused dasti by the complainant in good faith in the presence of Gaurav Garg. The accused, in order to discharge her legal liability, issued two cheques bearing No.915955 dated 06.11.2010 amounting to ₹2,50,000/- and bearing No.915956 dated 09.11.2010 amounting to ₹5,00,000/- in favour of the complainant in the presence of above-said Gaurav Garg, which on presentation for encashment, were returned back unpaid with the remarks 'Insufficient Funds' on 10.12.2010. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant appeared as CW-1 and tendered into evidence document; cheques, memo, legal notice, postal receipt, registered envelope etc. and also examined CW-2 Gaurav Garg and CW-3 Ajay Kumar Sharma, Senior Manager, Central Bank of India. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C. She was confronted with the evidence of the complainant and she denied all the incriminating evidence against her and pleaded her innocence. In defence, accused examined DW-1 EHC Rohtash, DW-2 Jagdish Taneja, Assistant Manger, Central Bank of India, DW-3 Parveen Kumar and DW Manjeet

Learned JMIC, Panipat, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 10.03.2016.

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

Lower Court record was also requisitioned.

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

From the record, I find that the accused, in the present case, has raised defence that she never borrowed any amount from the complainant at any point of time but complainant committed theft of the cheque book belonging to the accused and misused the cheques of the said cheque book. It is further the defence that regarding theft of the cheque book, accused got lodged a DDR on 02.11.2012 vide Ex.D1. The complainant used to blackmail her while saying that he had got some naked photographs of the accused and he used to extort money from her. The matter was also reported to the police but no action was taken. It is further stated that complainant, during his cross-examination, regarding borrowing of money, has cooked up a false story that he borrowed money from his father. It is also the case of the accused that she by filing application Ex.D3 got stopped payment of the cheques. It is also stated that in the account statement of the accused, there is no such entry of having received such a huge amount from any person at any point of time.

From the record, I find that, firstly, at the time of lending such a huge amount, the complainant has not got any document executed. No receipt or security document has been taken. There is no document on

record to show the transaction. Further, no particulars regarding the transaction have been mentioned in the complaint that on which, date, month and in which year how much money was paid. At time of the arguments before learned trial Court, it was argued that from January 2008 to August-September 2010, accused borrowed a sum of ₹9 lakhs from time to time from the complainant, which means that complainant is not mentioning that on which date, month and in which year, how much amount and at which place, has been given to the accused. Moreover, it looks improbable and unnatural that transactions were made for about 12-13 times and every time, CW-2 Gaurav Garg was present.

Further, I find that there is no occasion for the complainant to borrow money from his wife and father etc. and then to give it to the accused. Otherwise also, these facts have not been mentioned in the complaint. Furthermore, wife and father, have not been examined. It is further held by learned trial Court that the complaint is absolutely silent with regard to the time period within which the alleged amount of ₹9 lakhs was given to the accused dasti. It is also not mentioned in the complaint as to when accused allegedly issued post dated cheques in question to the complainant. It is further held that CW-1 complainant deposed that he could furnish the details of the amount borrowed by accused from his wife, however, no such details were produced on record. The complainant, for the first time, during cross-examination, disclosed the fact regarding borrowing money from his wife or father, if that is so, then, the complainant should have mentioned this fact in the complaint.

In view of the above discussion, I find that accused has raised

that blank signed cheque book was stolen. Further, the application given to the bank regarding stopping payment before presentation of cheques for encashment, corroborates the defence version. Therefore, the defence raised by the accused is probable one which is duly supported from the case of the complainant itself as well as defence evidence.

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 trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 10.03.2016 passed by learned JMIC, Panipat, 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.

October 16, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No