

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

CRM No.A-2545-MA of 2017 (O&M)

Date of decision: August 08, 2018

Amarjit Singh

...Applicant

Versus

Janeshwar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Inderjeet Singh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Amarjit Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Janeshwar challenging the impugned judgment dated 07.10.2017 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 in case, special leave to appeal is not granted, it will cause miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Amarjit Singh filed a complaint against accused Janeshwar under Section 138 of the Negotiable Instruments

Act. As per complainant's version, accused had borrowed an amount of

₹1.80 lakhs from him with the assurance to return the same on demand raised by the complainant. The accused in discharge of his existing liability, issued cheque bearing No.000007 dated 08.09.2014 amounting to ₹1.90 lakhs, 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 the evidence. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C and he was confronted with the evidence of the complainant. He denied the correctness of the evidence and pleaded his innocence and false implication. Accused further pleaded that he had purchased a tractor from the complainant's agency and the said tractor was got financed by him from Magma Fincorp Limited, Branch Office, Yamuna Nagar. It is further stated that at the time of getting said tractor financed, the above said Magma Fincorp Limited had taken his blank signed cheques as security. Accused also stated that complainant on account of having relations with said Magma Fincorp Limited, had procured his security cheques from there and misused the same. In defence, accused examined DW-1 Anukaran Sharma, Assistant Manager, HDFC Bank, who proved the account opening form of accused Ex.D1 and authority letter Ex.D2. DW-2 Mohan Singh, DW-3 Deepak Kumar, Legal Executive, Magna Fincorp Limited, Ambala and DW-4 Satpal were also examined.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 07.10.2017.

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.

First of all, present complainant has not mentioned any date, month or year, as to when the loan was advanced to the accused. No 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 ₹1.80 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. 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.

As the cheque is signed by the accused and the complainant is holding the cheque, therefore, presumption under Section 139 of the Negotiable Instruments Act is in favour of the complainant but it is settled law that presumption can be rebutted by the accused from the case of complainant itself or by leading defence evidence or both. The defence

raised by the accused is supported and corroborated by defence evidence. It

is proved on record that accused purchased tractor from complainant's agency. It is also proved on record that some of the amount was got financed from Magma Fincorp Limited. It is further proved on record by bringing witnesses that finance company had taken blank signed cheques from the accused.

Complainant, who is owner of tractor agency, is supposed to maintain the record in due course of business but no record has been produced of any type. Even facts regarding purchasing of tractor have not been mentioned by the complainant in the complaint. As already discussed, no date, month or year has been mentioned nor there is any document to show loan transaction, the defence raised by the accused is probable one, which is duly supported and corroborated by the defence evidence as well as from the case of the complainant and the presumption has been duly rebutted.

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 07.10.2017 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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.

August 08, 2018

Vgulati

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No