

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

CRM No.A-2676-MA of 2017 (O&M)

Date of decision: October 25, 2018

Pankaj Mehta

...Applicant

Versus

Gagan Sibal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

INDERJIT SINGH, J.

Applicant-Pankaj Mehta has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Gagan Sibal, challenging the impugned judgment dated 06.10.2017 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 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 Pankaj Mehta filed a complaint against accused Gagan Sibal under Section 138 of the Negotiable

Instruments Act. As per complainant's version, he had cordial relations with

the accused. Complainant obtained house loan facility of ₹11.30 lakhs from LIC, Yamuna Nagar. On account of cordial relations, accused requested the complainant to advance him a sum of ₹3.25 lakhs for domestic needs with an assurance that he will return the said amount as and when demanded by the complainant and said amount was advanced to the accused. The accused in discharge of his existing liability towards the complainant, had issued a cheque bearing No.548686 dated 15.01.2015 in the sum of ₹3.25 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 tendered into evidence documents; original cheque Ex.C1, return memo Ex.C2, copy of legal notice Ex.C3, receipt Ex.C4 and envelope Ex.C5. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him. He further pleaded that he never borrowed any amount in cash from the complainant. He made a chit fund transaction with the complainant and in this regard, complainant had obtained his two blank signed cheques along with one blank signed stamp paper from him, which were misused by the complainant by filing this complaint. He further pleaded that he has nothing to pay to the complainant and has no existing legal liability towards the complainant. In defence, accused appeared himself as DW-1 and tendered certified copy of complaint case Ex.D2 and other documents.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating

the evidence, acquitted the accused-respondent vide impugned judgment

dated 06.10.2017.

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.

From the perusal of the record, I find that the complainant has not mentioned any date, month, year as to when the loan was advanced to the accused. No other 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 ₹3.35 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 nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction.

Further, the perusal of the record, especially, the impugned judgment shows that complainant in cross-examination has stated that

amount of ₹3.25 lakhs was given by him to the accused on various

occasions i.e. ₹70,000/- on 24.08.2013, ₹1 lakh on 24.09.2013, ₹30,000/- on 30.09.2013, ₹90,000/- on 11.10.2013 and ₹35,000/- on 07.11.2013. The complainant has also stated that he has taken loan of ₹11.30 lakhs from LIC in August 2013. The perusal of the record shows that firstly, this fact has not been mentioned in the complaint that loan of ₹3.25 lakhs has been given on various occasions as stated in cross-examination by the complainant and it is a material improvement in the complainant version. In the complainant, he has nowhere stated that money has been paid in various transactions. Furthermore, it looks unnatural that complainant himself has taken loan from LIC on interest and he lent huge amount to the accused without any interest. Moreover, accused has raised defence that he was member of the chit fund run by the complainant and this cheque was taken as security for that purpose which has been misused. The accused has appeared as DW-1 and deposed all these facts but no such suggestion has been given to challenge the statement of the accused on these facts, which means that these facts remained unchallenged and will be treated as admitted by the complainant.

In view of the above facts and there being no document on record to show the loan transaction, I find that defence raised by the accused is probable one which is supported and corroborated by the evidence of the complainant itself as well as defence evidence. The presumption under Section 139 of the Negotiable Instruments Act 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 06.10.2017 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.

October 25, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No