

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-2741-MA of 2017

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Date of decision:09.10.2018

Sukhdev Singh

...Applicant

v.

Lakhwinder Singh 'Ex-Sarpanch'

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep S. Majithia, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Lakhwinder Singh 'Ex-Sarpanch' for grant of leave to appeal against the impugned judgment dated 13.10.2017 passed by learned Judicial Magistrate Ist Class, Amritsar, vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') has been dismissed and the accused has been acquitted of the charge as framed against him.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been stated that the respondent has wrongly been acquitted. It has been mentioned that if the leave to appeal is not granted then it will amount to miscarriage of justice. It has, therefore, been prayed that this application be

allowed and leave be granted to the applicant to file appeal.

From the record, I find that Sukhdev Singh-complainant filed complaint against Lakhwinder Singh under Section 138 of the Act. The averments made in the complaint are that accused Lakhwinder Singh was having friendly relations with the complainant and he took a loan of ₹12 Lakhs from the complainant and in order to discharge of his legal debt and liability, he issued cheque bearing No.245402 dated 26.12.2014 for ₹12 Lakhs which on presentation for encashment returned back with the remarks “title of the account wrong/incomplete” vide memo dtd 10.2.2015. Legal notice was given. When the amount was not paid, the complaint was filed within statutory period.

The complainant examined himself as CW-1 and closed his evidence.

At the close of evidence of the complainant, the accused was examined under Section 313 Cr.P.C. and was confronted with the incriminating evidence against him, but he denied the correctness of the same and pleaded himself as innocent. He also stated that he had not issued the cheque in dispute to the complainant. He stated that he is a respected person and remained Sarpanch of the village. There was no occasion for him to take any loan from the complainant. He has a shop at Bus Stand Adda Tangra and the complainant had visiting terms with him, he had stolen the cheque in question from his shop and thereafter misused the same by altering date of the cheque and by forging his signatures. The complainant has no financial capacity to advance the amount as alleged. He had given

reply to legal notice also. The complainant had manipulated the date of cheque from 26.10.2014 to 26.12.2014. The cheque in question is in mutilated condition which also shows that it was stolen and had been kept by the complainant to involve the accused in a false case. He also deposed that the complainant purchased land in his village adjoining the land of Village Panchayat during his tenure and he had stopped him from doing so as such he was having a grudge against him.

In defence, the accused examined DW-1 Sukhjinder Singh, Handwriting and Fingerprint Expert and closed his evidence.

The learned Judicial Magistrate Ist Class, Amritsar, after appreciating the evidence on record, vide impugned judgment dated 13.10.2017 acquitted the accused-respondent. Aggrieved from this judgment, the present appeal along with application seeking leave to appeal has been filed by the applicant.

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

From the perusal of record, I find that first of all no particulars have been mentioned in the complaint as to on which date, month or year the loan was given by the complainant to the accused. There is nothing as to in whose presence and at which place and whether by cash or through cheque this amount had been paid. No security document or receipt had been taken by lending such a huge amount. There is no particular in the complaint as to whether this money was withdrawn from the bank or from where it came to the complainant. There is no document on record to show

the loan transaction of any type. Further from the record, I find that the findings have been given by the learned Judicial Magistrate Ist Class, Amritsar, in the judgment after appreciating the evidence in right and proper perspective. In no way, these findings can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. There is presumption under Section 139 of the NI Act in favour of the holder of the cheque if it is signed by the accused. In the present case, the accused had examined DW-1 Sukhjinder Singh, Handwriting and Fingerprint Expert, who in his report has given the opinion that the signatures on the cheque are not of the accused. Furthermore, the accused had tendered into defence evidence cheque book Ex.D.1 containing cheques No.245401, 245403 to 245425. The accused had also tendered in evidence, the reply to legal notice dated 25.3.2015, in which he had taken the defence before filing of the complaint. Furthermore, learned counsel for the accused has shown me the cheque on which it is clear that the month had been changed from October to December by changing figure of '0' to '2' which is clear from naked eyes and it is no where bearing the signatures of the accused on the cutting which means the cheque has been tampered with. It is settled law that if the cheque is tampered or altered, the complainant is not entitled to any relief.

Keeping in view the above facts, I find that the judgment passed by the learned Judicial Magistrate Ist Class, Amritsar, acquitting the accused is correct as per evidence and law. The findings have been given

after appreciating the evidence in right and proper perspective which do not require any interference from this Court and the same are upheld.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378(4) Cr.P.C. seeking leave to appeal, the same is dismissed.

October 09, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No