

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

CRM No.A-2750-MA of 2017 (O&M)

Date of decision: October 25, 2018

Charan Singh

...Applicant

Versus

Amit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

INDERJIT SINGH, J.

Applicant-Charan Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Amit Singh, challenging the impugned judgment dated 04.10.2017 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, therefore, prayed that leave to appeal be granted.

As per the record, complainant Charan Singh filed a complaint against accused Amit Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused borrowed a loan of ₹13 lakhs from him for construction of a factory building and in turn, the

amount of ₹13,00,000/- 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 tendered into evidence documents; cheque Ex.C1, cheque return memos Ex.C2 and Ex.C2A, legal notice Ex.C3 and postal receipt Ex.C4. 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 the cheque in question was given as a security for some committee/chit fund transaction and complainant has misused the cheque and he also denied receiving of legal notice. In defence, accused examined DW-1 Sanjay Kalra and tendered into evidence documents; certified copy of deposition of Charan Singh in complaint No.1443 dated 25.07.2013 and record of the bank account of accused about the issuance of cheque books. The defence of the accused is that impugned cheque pertains to committee chit fund transaction of the year 2009. The cheque in question was issued as security but the complainant did not return the same on the pretext that same has been lost.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 04.10.2017.

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 ₹13 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, from the record, I find that during cross-examination, the complainant has tried to explain about advancement of loan amount and stated that said loan amount was advanced during the period of year 2012 to 2013 in various installments but it is a material improvement. There is no such averment in the complaint that loan amount has been given during the period from 2012 to 2013 in various installments. The complainant stated that he lives in a joint family and the account of income and expenditure is

maintained by his brother and father. During cross-examination,

complainant remained non-committal and ignorant about most of the particulars of the alleged transaction and stated that all such information can be revealed by his brother. At one time, the complainant stated that the loan was not advanced by him, rather, it was advanced by his father.

Furthermore, the complainant could not tell as to whether the loan was advanced on interest or without interest. Regarding date of advancement of loan, he stated that such fact can only be told by his brother but brother and father have not been examined. The complainant further stated that his father had advanced amount of ₹10 lakhs on two occasions and amount of ₹3 lakhs on another two occasions to the accused from the account of his transport business. In fact, the complainant has specifically stated that accused never assured him for the repayment and he never lent loan to the accused, which supports and corroborates the defence raised by the accused that he has never borrowed any amount from the complainant. The complainant further stated that said money was advanced by his father from income of his transport business but as already discussed, father of the complainant has not been examined. The actual person who lent the amount has not been produced/examined before the Court to prove advancement of loan.

In view of the above facts, I find that defence raised by the accused is probable one which is supported and corroborated by the evidence of the complainant himself 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 04.10.2017 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.

October 25, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No