

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

CRM No.A-308-MA of 2017 (O&M)

Date of decision: September 19, 2018

Ishwar Chand

...Applicant

Versus

Gurbachan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Raj Kapoor Malik, Advocate
for the applicant.

Mr.Saurabh Garg, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Ishwar Chand has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Gurbachan Singh, challenging the impugned judgment dated 08.12.2016 passed by learned Judicial Magistrate Ist Class, Kaithal, 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 Ishwar Chand filed a complaint against accused Gurbachan Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused issued a cheque

bearing No.713448 dated 07.06.2014 for consideration of ₹1,50,000/- in favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Insufficient Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined CW-1 Dilbagh Singh, himself as CW-2, CW-3 Deepak Kumar and CW-4 Ram Kishan. At the close of the complainant evidence, 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.

Learned JMIC, Kaithal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 08.12.2016.

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

Notice of the application was issued. Learned counsel for the respondent appeared and contested the application.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties 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 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. No income tax return has been produced to show the lending of the amount in question to the accused. No particulars have been mentioned regarding the liability, as to when it arose.

The defence of the accused is that complainant failed to prove the lending of loan. No valid legal notice was given and one of the necessary ingredient, is missing. Learned Magistrate after appreciating the evidence found that case of accused is that he never issued cheque to the complainant in discharge of any existing liability and he never obtained any loan from the complainant. No security document was obtained at the time of giving the loan. There is no document on the record to show the loan transaction. As already discussed, no date, month and year has been mentioned as to when the loan was given. There is no date as to when the complainant demanded back the loan amount. There is no document on the record to show the capacity of the complainant to lend such a huge amount.

Further, I find that legal notice sent to the accused through

legal notice is not signed by the complainant or his counsel, the averments in the legal notice cannot be got authenticated and it will be treated as only a typed paper. If legal notice does not bear signature of anybody, then how it can be proved in the evidence. The Clerk of the Advocate has appeared to prove the legal notice. Again, legal notice is not signed, therefore, it cannot be proved on record. Learned trial Court has relied upon the law laid down by the Hon'ble Rajasthan High Court in *Ramesh Chandra Baregama vs. Ramesh Chandra Joshi, 2012(3) CCC 795*, which fully apply to the facts of the case. Legal notice is not valid one, therefore, one of the necessary ingredient under Section 138 of the Negotiable Instruments Act is missing.

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 08.12.2016 passed by learned JMIC, Kaithal, 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.

September 19, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No