

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

CRM No.A-304-MA of 2015 (O&M)

Date of decision: August 27, 2018

Joginder Yadav

...Applicant

Versus

Devender Yadav

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ankit Gautam, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Joginder Yadav has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Devender Yadav, challenging the impugned judgment dated 27.11.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon, 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 if leave to appeal is not granted, then it will amount to miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Joginder Yadav filed a complaint against accused Devender Yadav under Section 138 read with

version, accused was having friendly relations with him. Accused had taken a sum of ₹25 lakhs in cash, as a friendly loan from the complainant. In discharge of above-said loan/liability, accused issued a cheque bearing No.272487 dated 21.07.2013 amounting to ₹25,00,000/-, in favour of the complainant, which on presentation for encashment, was returned back dishonoured 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 himself as CW-1 and relied upon documentary evidence i.e. cheque, return memo, legal notice, postal receipt, income tax return acknowledgment and statement of account.

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. He denied all the incriminating evidence against him and pleaded his false implication. In defence, accused relied upon the documentary evidence i.e. criminal complaint under Section 138 of the Negotiable Instruments Act titled as 'Joginder vs. Bijender' Ex.D1, evidence of Joginder Ex.D2, agreement to sell entered into between Joginder and Bijender Ex.D3 and agreement to sell dated 21.03.2013 Ex.D4.

Learned JMIC, Gurgaon, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 27.11.2014.

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 ₹25 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced. 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.

The accused has raised the defence that he did not borrow any loan from the complainant. In fact, agreement to sell was got executed between complainant Joginder and Bijender, which is Ex.D3 and as the complainant Joginder, Bijender and accused were good friends, therefore, accused gave the cheque in question as security cheque to the complainant just to secure his amount, which he had given to Bijender as a consideration for that sale agreement. But as Bijender himself did not have a complete title in his favour, rather, he has himself purchased the said property, on the basis of an agreement to sell, which is Ex.D4, hence, that transaction could

complaint under Section 138 of the Negotiable Instruments Act against Bijender and copy of that complaint is Ex.D1. It is further the case of the accused that statement of account produced by the complainant himself shows that complainant withdrew an amount of ₹20 lakhs by way of encashing the self cheque. Therefore, it has become very much clear that only a single transaction took place between the complainant Joginder, Devender and Bijender.

The perusal of the findings show that as per complainant, this amount of ₹25 lakhs was lying in cash at his home and it was given to the accused as friendly loan. This huge amount has nowhere been shown in the income tax return and it looks unnatural that such a huge amount is lying at residence and has not been shown in any transaction. The defence raised by the accused is supported by documentary evidence i.e. complaint by present complainant against Bijender and agreement to sell between them.

Further, the presumption has been rebutted as there is no document on record to show the loan transaction between the complainant and accused. As per evidence, ₹20 lakhs was withdrawn on 16.03.2013 through self cheque for the purpose of agreement to sell entered into with Bijender Ex.D3. CW-1 complainant in his cross-examination has stated that amount of ₹25 lakhs was with him at his house and he did not withdraw that amount. Furthermore, there are no particulars of any type showing the loan transaction. There is nothing on the record as to why no security document or receipt was taken from the accused while lending ₹25 lakhs. All these facts rebut the presumption under Section 139 of the Negotiable Instruments Act. The defence raised by the accused is probable which is duly supported

evidence.

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 27.11.2014 passed by learned JMIC, Gurgaon, 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 27, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No