

CRM-A-362-MA-2017

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

**CRM-A-362-MA-2017 (O & M)
Date of Decision: 30.11.2018**

Tanjeem

... Applicant

Versus

Vinod Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Subhash Godara, Advocate for
Mr. S.S.Dinarpur, Advocate,
for the applicant.

INDERJIT SINGH, J.

CRM-5744-2017

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 08 days in filing the application seeking leave to appeal, is condoned.

CRM-A-362-MA-2017

Applicant-Tanjeem has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent-Vinod Kumar challenging the impugned judgment dated 02.12.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, vide which the respondent-accused was acquitted.

CRM-A-362-MA-2017

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 the judgment passed by the trial Court is contrary to law and facts and the same is not sustainable in the eyes of law. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that complainant-Tanjeem filed a complaint against accused-Vinod Kumar under Section 138 of the Negotiable Instruments Act. As per the averments made in the complaint, the accused had to pay a sum of ₹8,20,000/- to the complainant, but he had failed to pay the same in time and later on with the assistance of nears and dears, a compromise dated 25.08.2014 was arrived at between the parties to the complaint as per which the accused had agreed to pay a sum of ₹50,000/- every month. The complainant further maintained that on the same day, a cheque bearing No.616743, amounting to ₹7 lakhs, was also handed over to him with the assurance that if the accused fails to pay the installment of ₹50,000/- of any of the respective month, then he shall have the right to put the said cheque in bank for collection of the cheque amount and the accused will have no objection on doing so by him. It is further the case of complainant that on 25.08.2014, the accused had paid an amount of ₹50,000/- to him and an affidavit was also executed by the accused on the same day. The complainant further averred that after waiting for sufficient time on 17.10.2014, he had presented cheque bearing No.616743 dated 16.10.2014, amounting to ₹7 lakhs, to his banker which was returned back with the remarks 'funds insufficient'. Legal notice was served. When amount was not paid, then the complaint was filed within time.

CRM-A-362-MA-2017

In support of his case, the complainant appeared into witness-box as CW 1 and tendered in evidence his affidavit Ex.CW 1/A alongwith original cheque Ex.C-2, return memos as Exs.C-3 to C-5, copy of legal notice as Ex.C-8, postal receipt as Ex.C-7, returned registered envelope alongwith acknowledgment as Ex.C-6 and copy of affidavit of Vinod Kumar as Ex.C-1.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence. He denied all the incriminating evidence against him and claimed himself to be innocent. He also stated that he did not know the complainant and that he had not made any transaction with the complainant at any point of time. He further stated that he was having a chit fund transaction with one Mewa Ram, who had taken two blank signed cheques as well as three blank signed papers from him as security of the aforesaid chit fund transaction. He further alleged that later on, Mewa Ram had not returned his blank signed cheques and papers and now he in collusion with the complainant has misused his blank signed cheque and papers.

Learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 02.12.2016.

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

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

CRM-A-362-MA-2017

From the record, I find that first of all, there is no date, month or year as to when loan of ₹8,20,000/- was advanced to the accused. There are no particulars regarding the liability of the accused in the complaint. There is nothing in the complaint that at which place, in whose presence and how much money was given and whether it was advanced in cash or by cheque. There is nothing as to when the loan was demanded back. Further, the complainant in his cross-examination stated that an amount of ₹8,20,000/- was paid by him to the accused as sale consideration for the purchase of a plot which was shown by the accused. However, there is no such written agreement to sell between the complainant and the accused. The complainant has not obtained any receipt from the accused qua receiving of ₹8.20 lakhs. The complainant also stated that he had never seen the documents pertaining to the plot which he intended to purchase from the accused. He also stated that he knew the accused as he was a classmate of his brother namely Tasin, but Tasin has not been examined by the complainant. The Court also found the case of complainant as doubtful qua advancement of ₹8.20 lakhs to the accused as sale consideration without executing any document and without seeing original document of title of alleged plot. Further, the complainant has stated that he had borrowed amount of ₹8.20 lakhs from someone to be given to the accused. It also looks unnatural that the complainant had borrowed ₹8.20 lakhs from someone and given the same to the accused without obtaining even a receipt from him. Otherwise also, this fact is also not mentioned in the complaint. Furthermore, no such person has been examined to prove that the complainant had borrowed the said amount from him. Further, it is in the

CRM-A-362-MA-2017

cross-examination of the complainant that he is earning ₹10,000/- to ₹15,000/- per month. Therefore, he was not having any financial capacity to give such a huge amount. Further, the trial Court has correctly held that affidavit Ex.C-9, which is stated to be executed by the accused, showing his liability of ₹8.20 lakhs towards the complainant and consent to pay ₹50,000/- as monthly installment, has also not been proved as per law. No attesting witness to the same has been brought on record. This document has been simply tendered by the complainant and the accused has not got the opportunity to cross-examine him. The original of document Ex.C-9 was also not produced meaning thereby this document cannot be read into evidence and the same has not been proved as per law. If the original document was not available with the complainant, then he should have asked for permission to lead secondary evidence. The very base of this case is affidavit Ex.C-9, which has not been proved as per law. Furthermore, the trial Court has held that perusal of the cheque in question Ex.C-2 would show that signatures on the body of the cheque and name of the payee and date on the cheque are in different ink, which supports the version of the accused that blank signed cheque has been misused.

The findings have been given by the trial Court after appreciating the evidence in right and proper perspective. 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

CRM-A-362-MA-2017

learned Court below.

From the perusal of the judgment passed by the Court below, I find that the findings given by the lower Court are correct, as per evidence and law and the accused has been rightly acquitted. In no way, the impugned judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 02.12.2016 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari is correct, as per law and evidence and the same 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.

30.11.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

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