

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

CRM No.A-409-MA of 2014 (O&M)

Date of decision: August 01, 2018

Krishan Kumar

...Applicant

Versus

Mrs.Usha

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.K.Saini, Advocate
for the applicant.

Mr.Gourav Jain, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Krishan Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Usha Rani, challenging the impugned judgment dated 27.11.2013 passed by learned Judicial Magistrate Ist Class, Hisar, 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 the applicant is not granted permission to file appeal, then he will suffer an irreparable loss. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Krishan Kumar filed a

complaint against accused Usha under Section 138/141 of the Negotiable Instruments Act. As per complainant's version, in order to discharge outstanding partial debt/liability enforceable by law, accused had issued a cheque bearing No.267017 dated 30.06.2009 for a sum of ₹3,15,000/- in favour of 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 closed the evidence. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C and she was confronted with the evidence. She denied all the incriminating evidence. In defence, accused examined DW-1 Raj Kumar, DW-2 Dilbag Singh, DW-3 Subhash Chander and examined herself as DW-4.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 27.11.2013.

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

Notice of the application.

Mr.Gourav Jain, who had already been appearing on behalf of respondent on notice regarding application for condonation of delay, accepts notice of main case on behalf of respondent and contests the same.

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.

The perusal of the record shows that in the complaint, no date, month and year has been mentioned as to when the loan was advanced. No particulars of any type have been mentioned in the complaint as to whether the amount was paid in cash or by cheque. There is no averment that at which place and in whose presence the loan was advanced. No receipt or any security document was got executed at the time of advancing the loan. Furthermore, there is no document to show the loan transaction. All these facts support the defence version of the accused.

Further, I find that even in the complaint, the complainant has not given the extent of liability. He has stated that the cheque in question has been issued in partial liability. The case of the accused is that she is not under the liability to pay the amount of ₹3.5 lakhs to the complainant. Rather, she stated that a security cheque was given to one Shamsher Singh, who promised to get a government job for his daughter and Shamsher Singh misused that cheque and handed over the same to the complainant, being his friend. In support of her case, accused has produced copy of degree of B.Tech of her daughter, which is Ex.DX/1. Accused herself has appeared as DW-4 to support the defence version.

There is no document to show the liability nor any security

document or receipt has been obtained at the time of advancing the loan. No particulars have been mentioned as to when the liability arose and even, extent of liability has not been mentioned in the complaint. The defence raised by the accused is probable one. Keeping in view the above facts, I find that 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 27.11.2013 passed by learned JMIC, Hisar, 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 01, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No