

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

CRM No.A-382-MA of 2015 (O&M)

Date of decision: August 02, 2018

Yudhister

...Applicant

Versus

Satya Prakash Beghel

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Prashant Sethi, Advocate
for the applicant.

None for the respondent.

INDERJIT SINGH, J.

Applicant-Yudhister has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Satya Prakash Beghel, challenging the impugned judgment dated 10.12.2014 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 Yudhister filed a complaint against accused Satya Prakash Beghel under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused is well know to him

and accused borrowed a sum of ₹3 lakhs from him in the month of

December 2011, and promised to repay the same within a period of six months but he failed to make the repayment. The accused made the repayment of loan amount by issuing account payee cheque bearing No.832454 dated 12.10.2012 for a sum of ₹3 lakhs in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'payment stopped by drawer'. 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 cheque in question Ex.C1, bank return memo Ex.C2, 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 and he was confronted with the evidence. He denied all the incriminating evidence and pleaded his false implication.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 10.12.2014.

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. Earlier, learned counsel for the respondent appeared but later on, he absented from the proceedings and today also, no one has put in appearance on behalf of the respondent.

Lower Court record was also requisitioned.

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 record, firstly, I find that no date has been mentioned on which huge amount of ₹3 lakhs was paid to the accused. Furthermore, there is no particular regarding the loan transaction. No security document or receipt has been taken at the time of advancing the loan. No income tax return has been placed on record to show the loan transaction. No other document of any type has been produced to show the capacity of complainant to lend the amount in question. There is also no particular as to when the demand was raised to return the loan amount.

Moreover, in this case, legal notice given by the complainant to the accused is neither signed by the complainant nor by his counsel. The authenticity of the legal notice cannot be verified as it is not signed by anybody, therefore, in no way, in the eyes of law, this notice can be termed as legal notice. If this document is not signed by anybody, then another point is that how this legal notice has been proved by the complainant, which is not signed by him nor his authorized counsel. Therefore, the legal notice, is otherwise also, inadmissible in evidence. If legal notice goes, then one of the main ingredient of Section 138 of the Negotiable Instruments Act is also not proved and accused will be entitled to acquittal.

does not possess any evidence to show the lending of loan to the accused. The issuance of the blank signed cheques by the accused is further corroborated from the cheque Ex.C1, which is filled in different inks.

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 10.12.2014 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.

August 02, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No