

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

CRM No.A-434-MA of 2015 (O&M)

Date of decision: September 24, 2018

Jaswinder Singh

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Mamli, Advocate
for the applicant.

Mr.Sukhdeep Parmar, DAG, Haryana
for the respondent-State.

None for respondent No.2.

INDERJIT SINGH, J.

Applicant-Jaswinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Malkit Singh, challenging the impugned judgment dated 06.01.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 Jaswinder Singh filed a

complaint against accused Malkit Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, he is a commission agent and has agreed to purchase trees standing in the fields of the accused and had paid ₹9,90,000/- to the accused and accused had assured to supply his trees to the complainant. Accused, thereafter, did not sell his trees to the complainant and when the complainant demanded his money back, the accused in discharge of his existing liability towards the complainant, had issued a cheque bearing no.503627 dated 18.03.2013 in the sum of ₹9,90,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'Cheque unusable'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The case of the accused is that he had never issued the cheque in question in favour of the complainant in discharge of any existing legal liability. He further stated that he does not even know the complainant. He further stated that he had taken a loan of ₹2,50,000/- from the owner of M/s Jai Singh and Rajinder, Commission Agent and at the time of taking that loan, the said owner had taken a blank signed security cheque from him, which is cheque in question. The present complainant has connived with M/s Jai Singh and Rajinder and has misused the cheque in question.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 06.01.2015.

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 State counsel

appeared. However, none appeared on behalf of respondent No.2 despite service.

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

From the record, I find that complainant in his examination-in-chief by way of affidavit deposed regarding original cheque Ex.C1, return memo Ex.C2, copy of legal notice Ex.C3 and postal receipt Ex.C4. He stated that he is proprietor of M/s Ganpati Traders Company. He further stated that he maintains five account books of his firm and all transactions done by him in course of his business are recorded by him in his Bahi Khata. The complainant has not produced the account books before the trial Court to prima facie show this transaction. It is also submitted by the complainant that this transaction was done through writing and there was no witness to the writing but no such writing has been proved by the complainant. It is further stated by the complainant in the cross-examination that this was his first dealing with the accused and he had never done any business dealing with the accused earlier and there was no mediator between him and accused. The Court disbelieved this version of the complainant. If it is so, as to why the complainant would pay such a huge amount without any writing or agreement, as no such writing came on the record. The Court below, also from the cross-examination, found that present complainant is running a shop in Anaj Mandi, Chhachhrauli, where M/s Jai Singh and Rajinder are also commission agent. The complainant admitted that he knew M/s Jai Singh and Rajinder commission agents. Otherwise also, no particulars have been given by the complainant

complaint. No date has been mentioned on which the amount has been paid. No record has been produced to show payment of such a huge amount to the accused.

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 findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 06.01.2015 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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 24, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No