

CRM-A-490-MA-2017

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

CRM-A-490-MA-2017

Date of Decision: 16.04.2018

Ramesh Kumar

... Applicant

Versus

Jasbir Singh Kathuria

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Naveen Bawa, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant-Ramesh Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent-Jasbir Singh Kathuria, challenging the impugned judgment dated 15.12.2016 passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that the judgment passed by learned Judicial Magistrate Ist Class, Ludhiana is illegal and perverse and the same is liable to be set aside. It is, therefore, prayed that leave to file appeal be granted.

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

CRM-A-490-MA-2017

As per the record, complainant-Ramesh Kumar filed a complaint against accused-Jasbir Singh Kathuria and Harjot Kaur (not summoned by the trial Court) under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 of the Indian Penal Code. The facts of the case, as noted down in the impugned judgment dated 15.12.2016 passed by learned trial Court are as under:

“2. The brief facts of the case are that there were friendly/family relations between the accused and the complainant and both the accused took a friendly loan of Rs.4 lacs from the complainant and later on, in order to discharge their legal liability towards the complainant, both the accused in consultation and in connivance with each other issued a cheque bearing No.593378 dated 10.01.2014 for Rs.4 lacs drawn on ICICI Bank Ltd., SCO 146 & 147 Feroze Gandhi Market, Ludhiana under the signatures of accused no.1 out of the joint account of both accused. At the time of issuance of said cheque, both the accused assured the complainant that there are sufficient funds in their account to honour the said cheque and that the said cheque will be duly honoured as and when same will be presented by the complainant in his bank for collection. That believing the

CRM-A-490-MA-2017

representations of both the accused to be true, the complainant accepted the said cheque and presented the same in his bank account maintained in Punjab National Bank, Ludhiana, but the said cheque was received back as dishonoured vide memo dated 07.02.2014 with the remarks "Funds Insufficient". By doing above said act, both the accused have caused wrongful loss to the complainant and wrongful gain to themselves. The complainant served a legal notice dated 18.02.2014 upon the accused through counsel through registered post calling the accused to make the payment of above said cheque amount to him within fifteen days from the receipt of the legal notice, but the accused in spite of receipt of the legal notice and having its knowledge failed to comply with the legal notice and did not make the payment of cheque amount to the complainant. Hence, the present complaint."

Learned Judicial Magistrate Ist Class, Ludhiana, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 15.12.2016.

Aggrieved from the abovesaid judgment of acquittal, the present appeal alongwith application for leave to appeal has been filed.

CRM-A-490-MA-2017

At the time of arguments, learned counsel for the applicant has not pointed out anything as to how findings given by the trial Court are perverse, against the evidence or law. He has also not pointed out as to which material evidence has been misread by the trial Court and which material evidence has not been considered by the trial Court.

Perusal of the record shows that applicant-complainant has not mentioned the date, month and year as to when he gave ₹4 lakhs as a loan to the respondent-accused. No particulars of any type have been mentioned as to on which place and in whose presence the money was paid and what was the necessity of the accused at that time. No receipt or security document has been got executed from the accused while lending such a huge amount of ₹4 lakhs. There is no document of any type to show this loan transaction which is denied by the accused. No bank document has been placed on record from where such a huge amount was withdrawn by the complainant for giving to the accused, nor there is any record of any type including income-tax returns to show that this amount was given to the accused. There is no particular as to when the loan was demanded back from the accused. It is settled law that presumption can be rebutted under Section 139 of the Negotiable Instruments Act by the accused by raising probable defence. The accused has raised probable defence in this case. He stated that he had no necessity to borrow ₹4 lakhs from the complainant. He is having flourished practice as a doctor. Secondly, defence of the accused is that wife of applicant-complainant in discharge of her liability issued a

CRM-A-490-MA-2017

cheque of ₹1,40,000/- to the present accused qua which he filed the complaint against her and she was convicted in that complaint case and appeal is pending. It looks improbable that when wife of the complainant is to pay ₹1,40,000/- to the accused, then as to why the complainant would lend ₹4 lakhs to the accused instead of paying ₹1,40,000/- firstly to the accused or by adjusting that amount of ₹1,40,000/-. The defence raised by the accused is probable one.

Therefore, from the above discussion, I find that the findings given by the trial Court are correct, as per evidence and law. In no way, findings given by the trial Court can be held as perverse. The trial Court has given the findings after appreciating the evidence in right perspective. No illegality has been committed by learned trial Court while recording the findings. The impugned judgment dated 15.12.2016 passed by learned Judicial Magistrate Ist Class, Ludhiana does not require any interference from this Court and hence finding no ground to grant permission for leave to appeal, the present application stands dismissed.

16.04.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	No