

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

CRM No.A-520-MA of 2014 (O&M)

Date of decision: October 03, 2018

Pardeep

...Applicant

Versus

Mastkeen

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Namit Khurana, Advocate
for the applicant.

Mr.Vikram Rana, Advocate for
Mr.Diwan S.Adlakha, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Pardeep has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent Mastkeen, challenging the impugned judgment dated 17.01.2014 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 complainant's version, accused taking benefit of friendly relations with the complainant, borrowed a sum of ₹15 lakhs from him and

promised to repay the said amount within 15 days. In discharge of his

existing liability towards the complainant and proprietor of M/s Krishna Timbers, accused issued two cheques bearing No.147276 dated 05.05.2009 in the sum of ₹8,00,000/- and No.147277 dated 08.05.2009 in the sum of ₹7,00,000/-, which on presentation for encashment, were returned back dishonoured with the remarks 'Funds Insufficient' and 'Stop payment' respectively. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him and pleaded his innocence. In defence, accused examined DW-1 Laxman Dass, Assistant Manager.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 17.01.2014.

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. Learned counsel for the respondent appeared and contested the application.

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.

From the perusal of the record, I find that the complainant has not mentioned any date as to when the loan was advanced to the accused. No other particulars of any type have been mentioned in the complaint. No receipt or security document was got executed while lending such a huge amount of ₹15 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced. There is no document on record to show the loan transaction. Nothing is there as to when liability arose and how it arose.

Learned trial court has minutely scrutinized the cross-examination of the complainant. In the cross-examination, complainant stated that he runs business of timber trading as well as financier by profession. Accused had assured him that he will either supply raw material or to return the amount. He also stated that money was not withdrawn from the bank and stated that some amount was lying with him and he borrowed remaining money from his wife, family and other persons. The complainant further deposed that in the financial year 2009-10, he had given about ₹35 lakhs to various persons and in the financial year 2009-10, he had filed income tax return showing his annual income to be approximately ₹2.5 lakhs. This cross-examination makes the case of the complainant doubtful. The money was not stated to have been given on interest, then why the complainant would borrow money from wife, family members and other persons to give to the accused. Accused is not close relative or close friend

of complainant. There is no such evidence to show the compulsion to give the loan after borrowing from others and that too without interest. It also looks unnatural that complainant gave loan of ₹35 lakhs to various persons when he is showing his annual income in the income tax return as ₹2.5 lakhs. Furthermore, no person has been examined by the complainant from whom he has borrowed the money. In cross-examination, he further admitted that just like present case, he has also filed one case against Nidhi Timber and in that case also, two cheques are involved, one of ₹8 lakhs and other of ₹7 lakhs. He admitted that both the cheques in case of Nidhi Timber have been filled up in the same handwriting. On the other hand, accused produced DW-1 Laxman Dass, who stated that application was made by accused to the Bank on 20.04.2009, which is Ex.D3, in which accused requested the bank to make the stop payment of four of his cheques bearing No.147276 to 147279. The accused also tendered documents including DDR entry dated 11.04.2009, vide which accused had reported to police regarding the fact that many of his documents have been lost including 5-6 blank signed cheques. This DDR report to the police and further, the application given to the bank regarding loss of cheques, shows that these were prior to the date of issuance of the cheques. The defence raised by the accused is probable which is duly supported and corroborated by case of the complainant itself as well as defence evidence and presumption 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

In view of the above discussion, I find that the impugned judgment dated 17.01.2014 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.

October 03, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No