

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

CRM-A-608-MA of 2017.
Decided on:- October 16, 2018.

Kanwar Pal.

.....Applicant.

Versus

Dharam Pal.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Arun Sharma, Advocate
for the applicant.

HARI PAL VERMA, J.

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal, against the judgment dated 16.01.2017 passed by learned Judicial Magistrate 1st Class, Bilaspur, District Yamuna Nagar, whereby respondent Dharam Pal (hereinafter mentioned as the accused) was acquitted of the charges framed against him in a criminal complaint filed by applicant Kanwar Pal (hereinafter mentioned as the complainant) under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act).

Briefly stated, the complainant had filed a complaint under Section 138 of the Act alleging therein that the accused is employed with Punjab National Bank, Branch Deodhar, Tehsil Chhachhrauli, District Yamuna Nagar. The complainant is a resident of village Nathanpur, District Yamuna Nagar, which is situated near the aforesaid branch. The complainant is a customer of the aforesaid branch of the bank and as such, he came into contact with the accused. Since the accused was in need of money, he

borrowed a sum of Rs.3,50,000/- from the complainant. In discharge of his liability towards the complainant, the accused issued a cheque bearing No.842452 dated 15.11.2011 for a sum of Rs.3,50,000/- drawn on Punjab National Bank, Deodhar, District Yamuna Nagar in favour of the complainant. The accused assured the complainant that whenever the complainant will present the said cheque in the bank, the same would be encashed. However, on presentation, the said cheque was dishonoured with the remarks "Exceeds arrangement" vide memo dated 15.11.2011 issued by the aforesaid bank. Thereafter, the complainant through his counsel sent a legal notice dated 17.11.2011 to the accused requiring him to pay the amount of cheque within 15 days from the date of receipt of notice, but to no avail. Hence the complaint.

After recording preliminary evidence of the complainant, the accused was summoned to face trial under Section 138 of the Act vide order dated 19.12.2011 passed by the trial Court. On finding a prima facie case against the accused, notice of accusation under Section 138 of the Act was served upon the accused vide order dated 13.12.2012 passed by the trial Court to which the accused did not plead guilty and claimed trial.

In support of his case, the complainant examined himself as CW1 and Vishal Verma, Head Cashier, Punjab National Bank, Deodhar as CW2 and placed on record certain documents including cheque Ex.C1, memo Ex.C2, acknowledgement receipt Ex.C3 and legal notice Ex.C4.

In his statement under Section 313 Cr.P.C., the accused denied the allegations and pleaded his innocence and false implication. However, no evidence was led by the accused in his defence.

After considering the evidence produced on record and hearing arguments of both the sides, learned trial Court vide judgment dated 16.01.2017 acquitted the accused of the charges framed against him by giving him benefit of doubt.

Aggrieved against the aforesaid judgment dated 16.01.2017 passed by learned Magistrate, the complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the complainant has argued that though the complainant has produced sufficient evidence on record against the accused, but the trial Court did not appreciate the facts and evidence and failed to consider the fact that the accused had intentionally and deliberately issued the cheque in question to cheat the complainant. The trial Court has given a wrong finding that the complainant failed to furnish any documentary evidence in support of his source of income.

He has further contended that there has been no dispute regarding the signatures of the accused on the cheque in question as signatures on the same were admitted by the accused, which clearly shows that the cheque was issued by the accused. Thus, he has prayed that the impugned judgment dated 16.01.2017 passed by learned trial Court is unjust, unfair, contrary to law and is liable to be set aside.

I have heard learned counsel for the complainant.

Perusal of the impugned judgment dated 16.01.2017 passed by learned trial Court shows that the complainant has failed to adduce any document to support his source of income. Further, the complainant and accused do not have friendly relations and it is only in friendly relations, such

money is exchanged. Further more, no sane person would like to advance money unless there is an acknowledgement/receipt by the recipient.

Interestingly, in the complaint, there is no specific date of payment to the accused. Neither there is any purpose for which the money was advanced nor any specific detail of payment of money has been given in the complaint. Thus, this Court finds that there is no illegality in the impugned judgment dated 16.01.2017 passed by learned trial Court, whereby the accused was acquitted of the charges levelled against him by giving him benefit of doubt.

The complainant has failed to show any misreading of evidence by the learned trial Court and has not been able to point out any legal error in the judgment under challenge, which may warrant interference by this Court. Thus, in the absence of any cogent evidence on record to connect the accused with the alleged crime, no case is made out for interference in the impugned order dated 16.01.2017 passed by learned Judicial Magistrate 1st Class, Bilaspur.

The present application is, consequently, dismissed. Leave to appeal is declined.

October 16, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No