

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

CRM No.A-649-MA of 2015 (O&M)

Date of decision: October 26, 2018

Sumit Kumar

...Applicant

Versus

Hira Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Kumar Khunger, Advocate
for the applicant.

Mr.J.S.Grewal, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Sumit Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Hira Singh, challenging the impugned judgment dated 03.03.2015 passed by learned Judicial Magistrate Ist Class, Abohar, 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 Sumit Kumar filed a complaint against accused Hira Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, in discharge of legal liability, the

accused issued a cheque bearing No.551263 dated 01.06.2013 for ₹3,35,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'Payment Stopped by the 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 CW-2 Jai Singh. 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 Subhash Chander, who proved account entries Ex.D1 to Ex.D4. This witness later on did not support the defence and turned hostile. DW-2 Karamjit Singh stated that accused has dealing with Subhash Chander and present cheque has been got misused by Subhash Chander through his nephew Sumit Kumar.

Learned JMIC, Abohar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 03.03.2015.

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 counsel for the respondent appeared and contested the application.

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

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 ₹3.35 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.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising defence, which should be probable one. In the present case, the accused has rebutted the presumption by raising probable defence. The accused stated that he had dealings with Subhash Chander, commission agent, who obtained blank cheques from him (accused), which he misused by filling up and by giving the same to his nephew Sumit Kumar, complainant. DW-2 Karamjit Singh has deposed that Sumit Kumar is nephew of Subhash Chander. Otherwise also, this fact is not contested at the time of arguments before this Court by learned counsel for the applicant that Sumit Kumar is nephew of Subhash Chander. As already discussed, there is no document to show the loan transaction and no particulars have been given to show the loan transaction.

hostile but he proved Ex.D1 to Ex.D4, showing dealing of accused with him.

Learned counsel for the applicant mainly relied upon a suggestion given by defence counsel that accused has paid the amount. Learned trial court has correctly appreciated the evidence and has gone through the evidence and held that evidence is to be read as a whole and one suggestion cannot be read in isolation. Learned Court below held that whole cross-examination of complainant and defence raised in the statement under Section 313 Cr.P.C. and statement of DW-2 nowhere shows that it is the defence of the accused that amount was borrowed and repaid, though suggestion was given by the counsel.

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 03.03.2015 passed by learned JMIC, Abohar, 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 26, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No