

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

CRM No.A-716-MA of 2014 (O&M)

Date of decision: December 14, 2018

Kuldip Kaur

...Applicant

Versus

Malkiat Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.M.S.Sachdev, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Kuldip Kaur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Malkiat Singh, challenging the impugned judgment dated 01.03.2014 passed by learned JMIC, Jalandhar, 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 Kuldip Kaur filed a complaint against accused Malkiat Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, in order to discharge the financial liability of personal loan taken from the complainant, accused

issued a cheque bearing No.266540 dated 26.04.2009 for a sum of

₹4,50,000/- in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined herself as CW-1 and mainly deposed regarding documents original cheque Ex.C1, bank memo Ex.C2, legal notice Ex.C3, postal receipt Ex.C4 and acknowledgment Ex.C5.

Learned counsel for the applicant argued that statement of account was also proved by complainant Ex.C6, though, Court has not mentioned regarding the same. CW-2 Kamlesh Kaur was also examined, who was knowing the complainant and stated that money was given to the accused at her instance.

At the close of complainant evidence, 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 and false implication. He further pleaded that he used to sell milk to the complainant and complainant was running a committee business of which he was also the member. Complainant has taken the cheque in question as guarantee of said committee which is misused by her. In defence, accused examined DW-1 Jaswinder Pal Singh and DW-2 Pankaj Soni, who deposed that complainant was doing the committee business and cheque in question has been given as guarantee for such committee which accused was having with her.

Learned JMIC, Jalandhar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

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

From the perusal of the record, I find that the complainant has not mentioned any date, month, year 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 ₹4.5 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction. Though, in the complaint it is stated that cheque was issued to discharge the financial liability of personal loan but there is nothing as to whether the amount was given in one go or on various dates. Even name of CW-2 Kamlesh Kuar has not been mentioned in the complaint that money was given at her instance. Even if it is taken that Court below has not discussed the statement of CW-2, it in no way, will affect the findings. CW-2 has not deposed anything except that she requested the complainant to lend money from time to time to the accused but perusal of the complaint shows that there is no such case of the complainant that CW-2 had asked her to lend money to the accused. Otherwise also, it is nowhere the case that money was given from time to time.

The perusal of the record further shows that there is no

document on record. If the money is given from time to time, then without record, it is not possible to remember all those transactions. There is no document to show the loan transaction of any type. There is nothing on the record as to when the loan was demanded back by the complainant. All these facts are fatal to the complainant's case in view of the law laid down by the Hon'ble Supreme Court in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*.

As regarding copy of statement of account, I find that it is submitted by the complainant and not proved by any bank official. Secondly, copy of statement of account will not prove that on which date, how much amount has been given to the accused or any amount withdrawn by the complainant has been given to the accused.

The accused has raised defence that complainant was doing committee business and cheques have been taken as security. This defence is supported by both the DWs. In view of statement of the DWs and case of the complainant, not giving even particulars of the loan transaction nor date, month and year has been mentioned nor any document to show this transaction, I find that the defence raised by the accused is probable one. It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. The accused has raised probable defence 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 no way, the findings can be held as perverse or against the evidence and

In view of the above discussion, I find that the impugned judgment dated 01.03.2014 passed by learned JMIC, Jalandhar, 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.

December 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No