

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

CRM No.A-749-MA of 2014 (O&M)

Date of decision: October 16, 2018

Naresh Kumar

...Applicant

Versus

Babu Ram Bansal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Malik, Advocate
for the applicant.

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

INDERJIT SINGH, J.

Applicant-Naresh Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Babu Ram Bansal, challenging the impugned judgment dated 30.01.2014 passed by learned Judicial Magistrate Ist Class, Panipat, 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 Naresh Kumar filed a complaint against accused Babu Ram Bansal under Section 138 of the Negotiable Instruments Act. As per complainant's version, parties to the complaint,

were in business of property dealership. Accused borrowed a sum of ₹2,25,000/- from the complainant and in discharge of his liability, the accused issued cheque No.534310 dated 20.12.2007 amounting to ₹2,25,000/- in favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Insufficient Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant appeared as CW-1 and also examined CW-2 Mahipal. 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 Karambir Kadian and DW-2 Balbir Singh, who have proved the affidavit of complainant Naresh Kumar Ex.D1.

Learned JMIC, Panipat, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 30.01.2014.

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.

From the record, I find that defence of the accused is that he

had made payment of the cheque in question to the complainant regarding

which the complainant had executed an affidavit Ex.D1 in presence of witnesses Karambir Kadian and Balbir Singh and nothing is due towards him. As issuance of cheque and signatures on the cheque are admitted, therefore, presumption is in favour of the complainant and accused is to rebut that presumption by raising probable defence. The accused in this case has examined two witnesses namely DW-1 Karambir Kadian and DW-2 Balbir Singh, who proved the affidavit of the complainant Ex.D1. Learned counsel for the applicant argued that affidavit Ex.D1 is a forged document. To prove that it is a forged affidavit, applicant-complainant has not produced any evidence. No expert has been examined by the complainant to show that the affidavit does not bear his signatures.

Furthermore, at the time of arguments, it has been argued that rather, accused had filed an application under Section 311 Cr.P.C. before learned trial court for sending the affidavit in question to the FSL, which was dismissed. Then, the accused came to this Court and filed revision against that order and that revision was dismissed by this Court on technical grounds. These facts, further, strengthen the case of the accused. The complainant has not made any attempt to prove that affidavit Ex.D1 does not bear his signatures, whereas, on the other hand, accused is asking to get compared the signatures of the complainant on the affidavit by filing applications to that extent. Therefore, I find that accused has duly rebutted the presumption by raising probable defence.

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 trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 30.01.2014 passed by learned JMIC, Panipat, 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 16, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No