

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

CRM No.A-820-MA of 2015 (O&M)

Date of decision: September 25, 2018

A.R.Gopala Krishnan Nair

...Applicant

Versus

Baldev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vinay Puri, Advocate for
Mr.D.K.Bhatti, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-A.R.Gopala Krishnan Nair has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Baldev Singh, challenging the impugned judgment dated 27.03.2015 passed by learned Judicial Magistrate Ist Class, 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 further stated that applicant will suffer irreparable loss and injury, if the present application is not allowed. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant A.R.Gopala Krishnan Nair filed a complaint against accused Baldev Singh under Section 138 of the

Negotiable Instruments Act. As per complainant's version, accused was having friendly relations with him and on 05.09.2012, he approached him for loan of ₹1,50,000/-, which was advanced to him in three installments by the complainant from his saving bank account, i.e., the sum of ₹60,000/- on 08.09.2012, ₹50,000/- on 01.10.2012 and ₹40,000/- on 28.10.2012. In order to discharge part of this liability, accused issued two cheques bearing No.698295 dated 27.12.2012 and No.355721 dated 27.12.2012 each amounting to ₹60,000/-, which on presentation for encashment, were returned back dishonoured with the remarks 'Account has been closed' and 'Opening balance insufficient' 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 and CW-2 Syaner, Clerk, Sandeep Industries, who proved on record the salary certificate of complainant as Ex.C9 and copy of attendance register of M/s Sandeep Industries as Ex.C10. At the close of the 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 also pleaded that he has not taken any alleged friendly loan from the complainant and is having no liability towards him. He stated that the complainant has misused the cheques in question in connivance with M/s Guru Nanak Finance, to which the cheque has been given as security for one loan taken by him from the said concern. He further pleaded that the cheque bearing No.698295 does not pertain to his bank account, nor signed by him. Similarly, he has stated that he has not signed upon other cheque and

complainant has forged both the cheques to file the present complaint. He

has also pleaded that he has not received any legal notice as alleged by the complainant. In defence, accused examined DW-1 Sukhwinder Singh, Officer, Punjab & Sind Bank, who proved on record statement of account bearing No.8691 in the name of Jaswinder Kaur wife of Baldev Singh as Ex.D1 and certified issued by the bank dated 25.08.2014 as Ex.D2 and has proved the fact that cheque bearing No.698295 dated 27.12.2012 Ex.C2 has been issued from the account of Jaswinder Kaur. DW-2 Fateh Chand Sharma, Document Expert, Jalandhar, tendered into evidence his report Ex.D3 with photographic chart Ex.D4 and opined that the cheque in question Ex.C2 does not bear the signatures of Baldev Singh.

Learned JMIC, Jalandhar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 27.03.2015.

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

Lower Court record was also requisitioned.

I have heard learned counsel for the applicant 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.

It is settled law that presumption under Section 139 of Negotiable Instruments Act arises when the cheque is in favour of holder of the cheque which was issued by the accused but it is also settled law that accused can rebut the presumption by raising probable defence. The perusal of the record shows that one cheque bearing No.698295 dated 27.12.2012 Ex.C2 has not been issued by the accused nor it was from his account. DW-2 Fateh Chand Sharma, Document Expert, has been examined to show that Ex.C2 was not signed by the accused. No expert, in rebuttal, has been examined by the complainant. Therefore, case of the complainant qua the cheque Ex.C2 is doubtful on this ground and it has not been proved that this cheque has been issued by the accused. Otherwise also, as this cheque was not from the account of the drawer, therefore, one of the necessary ingredient also goes.

Further, from the record, I find that on the same day i.e. 27.12.2012, two cheques have been issued but both are not from same series, one cheque is bearing No.698295 and other is bearing No.355721, which fact also creates doubt and supports and corroborates version of the accused. Otherwise also, if amount of ₹1,20,000/- is to be paid by way of cheque, then one cheque can be issued by the accused on that day instead of issuing two cheques from two separate cheque books. The defence raised by the accused is probable one and has been supported and corroborated from the complainant's case as well as from the defence evidence, especially, when the cheque Ex.C2 is not signed by the accused and also not from his account, which makes the whole case doubtful.

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 27.03.2015 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.

September 25, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No