

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

CRM No.A-907-MA of 2015 (O&M)

Date of decision: November 20, 2018

Smt.Kusum Kalra

...Applicant

Versus

Anita Bhalla

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Namit Khurana, Advocate
for the applicant.

Mr.Armaan Gagneja, Advocate for
Mr.Munish Gupta, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Smt.Kusum Kalra has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Anita Bhalla, challenging the impugned judgment dated 07.04.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 Smt.Kusum Kalra filed a complaint against accused Anita Bhalla under Section 138 of the Negotiable

liability towards the complainant, the accused had issued a cheque bearing No.306811 dated 28.06.2013 in the sum of ₹45,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'A/c closed'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The defence of the accused in the present case is that she had never issued the cheque in question in favour of the complainant in discharge of any existing legal liability. She further stated that she has no debt or liability to discharge towards the complainant. She had never received any money from the complainant. She further stated that husband of the complainant namely HC Kalra is running the business of chit fund and she became member of chit fund being organized by HC Kalra in the year 2011-12 and at the time of becoming member of chit, said HC Kalra had taken two blank signed security cheques from her. Accused also stated that she had returned the entire amount to HC Kalra, but HC Kalra has connived with the present complainant and has forged and fabricated the cheque in question to file the present false complaint against her.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 07.04.2015.

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.

Lower Court record was also requisitioned.

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 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.

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. In the cross-examination, the complainant has stated that she does not know the date on which money was given by her to accused but then she stated that money was given to accused in May, 2013. She further stated that she had not withdrawn the money from her bank account to give the same to accused. She admitted the fact that HC Kalra is her husband. She also stated that she does not know how many cases have been filed by her husband against various persons under Section 138 of the Negotiable Instruments Act. The complainant next stated that she does not know whether accused had become a member of chit fund which is being run by her husband and later on volunteered to state that accused had not become member of said chit fund. She also stated that cheque in question was given by accused to her on the same day on which payment was taken by accused from her and accused is her neighbour. She denied the suggestion that her husband had taken two blank signed security cheques from accused at the

time when accused became member of said chit being run by her husband.

The perusal of the record shows firstly, there are no particulars regarding advancement of loan of any type. No security document or receipt has been taken at the time advancing the loan. Thirdly, there is no document on the record to show the loan transaction. Further, there is nothing regarding source of amount given to the accused. There is no date as to when the amount was demanded back. Therefore, present case is fully covered by the law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*** and all these facts are fatal to the case of the complainant.

Further, from the record, I find that there is no witness to the loan transaction nor there is any document of any type to show the loan transaction. Moreover, the complainant has not denied the fact that her husband is running a chit fund scheme. She simply stated that accused was not member of the chit fund scheme. The cross-examination of the complainant supports and corroborates the defence version. The complainant also stated that she did not how much cases have been filed by her husband against various persons, which further corroborates the defence version.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the accused has raised probable defence, which is supported and corroborated by the case of the complainant as well as defence evidence 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 judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 07.04.2015 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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.

November 20, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No