

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

CRM No.A-1476-MA of 2016 (O&M)

Date of decision: January 24, 2019

Onkar Singh

...Applicant

Versus

Beant Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arshdeep Singh Sivia, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Onkar Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Beant Singh, challenging the impugned judgment dated 25.04.2016 passed by learned Judicial Magistrate Ist Class, Amritsar, 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 Onkar Singh filed a complaint against accused Beant Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused purchased a property from the complainant vide sale deed dated 30.04.2013 for a total

consideration of ₹9,50,000/- and in order to discharge his legally

enforceable debt and liability towards purchase price of the said property, accused issued a cheque bearing No.252359 dated 30.04.2013 for a sum of ₹6,00,000/- 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 himself as CW-1 and proved documents i.e. cheque Ex.C1, bank memo Ex.C2, legal notice Ex.C3 and postal receipt Ex.C4.

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. In defence, accused examined DW-1 Rachhpal Singh, Registration Clerk, who proved certified copy of sale deeds Ex.DW1/A and Ex.DW/1B. Accused further examined DW-2 Satpal Singh and DW-3 Kasturi Lal, Ex-Sarpanch and tendered some documents.

Learned JMIC, Amritsar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 25.04.2016.

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.

The perusal of the findings given by learned Magistrate shows

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 record, I find that main case of the complainant is regarding dishonouring of the cheque issued to discharge the liability of part payment of the purchase money of the property. In the cross-examination, the complainant admitted that he has received ₹4 lakhs in cash and the total sale consideration was ₹9,50,000/-. Therefore, ₹6 lakhs was not the remaining sale consideration, rather, it remains only ₹5.50 lakhs, as per case of the complainant himself. There is no explanation as to why cheque of ₹6 lakhs was issued by the accused. At the time of evidence, complainant further improved his version and stated that another sale deed was executed by wife of the complainant and ₹50,000/- remains with regard to that sale deed but this is not the case of the complainant in the complaint and this version came first time in the cross-examination.

Furthermore, copy of the sale deed is on record, in which, it is mentioned that complainant has received full sale consideration from the accused. In view of specific averment mentioned in the sale deed also, there remains no liability against the accused for which he issued cheque to the complainant. The accused is only to raise probable defence and in the present case, defence raised by the accused is probable one that he has paid total sale consideration and presumption under Section 139 of the

Negotiable Instruments Act 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 law.

In view of the above discussion, I find that the impugned judgment dated 25.04.2016 passed by learned JMIC, Amritsar, 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.

January 24, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No