

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

CRM No.A-1697-MA of 2018 (O&M)

Date of decision: January 08, 2019

Amar Chand Bajaj

...Applicant

Versus

Shyam Sunder Chugh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vishal Yadav, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Amar Chand Bajaj has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Shyam Sunder Chugh, challenging the impugned judgment dated 07.06.2018 passed by learned Sessions Judge, Faridabad, vide which appeal filed by accused-respondent against the judgment of conviction dated 14.06.2017 and order of sentence dated 15.06.2017 passed by learned Judicial Magistrate Ist Class, Faridabad, was allowed and he 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 shall suffer an irreparable loss and injury, if the leave to appeal is not granted. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Amar Chand Bajaj filed a complaint against accused Shyam Sunder Chugh. As per the complainant's version, being an old friend of accused, he gave friendly interest free loan of

while taking the said loan, accused promised to repay the same in the month of August 2014. On 06.09.2014, accused made part payment of ₹64,800/- to the complainant and for the balance amount of ₹5,35,200/-, he issued a cheque bearing No.934520 dated 03.10.2014, in favour of the complainant, which on presentation for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was issued. When the payment was not made, then the complaint was filed within time.

The complainant examined himself as CW-1 and tendered affidavit Ex.CW1/A and also placed on record documents; original cheque Ex.C1, return memo Ex.C2, legal notice Ex.C3 and postal receipts Ex.C4 & C5. In defence, accused examined himself as DW-1 and also examined DW-2 Jitender Kumar. The accused took the defence that cheque in question was never issued by him in discharge of any legal debt or liability. Rather, the same was handed over as blank signed security cheque against a loan of ₹1 lakh only. It is the case of the accused that he has taken loan of ₹1 lakh on monthly interest of 5% and he has already returned the same by paying ₹1,29,800/- including interest to the complainant on different dates.

Learned JMIC, Faridabad, after appreciating the evidence, convicted the accused-respondent under Section 138 of the Negotiable Instruments Act and sentenced him to undergo imprisonment for a period of one year and to pay compensation to the complainant to the tune of ₹7,35,000/-. An appeal was filed by accused-respondent and learned Sessions Judge, Faridabad, accepted the appeal vide impugned judgment dated 07.06.2018 and acquitted the accused-respondent.

Aggrieved from the judgment dated 07.06.2018 passed by

learned Sessions Judge, Faridabad, present application seeking to leave to

appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record, especially the judgments passed by the Courts below.

The perusal of the record, first of all, shows that complainant has not given any date on which the loan was given. There is no date as to when the loan was demanded back. There is no document on record to show the loan transaction. There are no particulars that at which place and in whose presence the loan was advanced. No security document or receipt has been obtained while advancing such a huge amount.

Furthermore, in the evidence, the complainant has admitted receipt of ₹64,800/- on 06.09.2014 and has stated that he has not issued receipt. Accused has given reply to the legal notice, which is on record but there is no mention in the complaint regarding the reply received by the complainant to the legal notice. Learned lower Appellate Court has rightly relied upon the law laid down in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028* in this case.

Moreover, presumption under Section 139 of the Negotiable Instruments Act can be rebutted. The accused has raised probable defence in the present case which is duly supported and corroborated by the case of the complainant as well as defence evidence. The complainant did not make any reference, whatsoever, of the reply to the legal notice, either in his complaint or even in affidavit Ex.CW1/A. When the complainant has received reply Ex.D1, he had not sent any response to the reply to the accused.

Learned lower Appellate Court also found that complainant is

return. His annual income is approximately ₹2,50,000/- and he is married and having two school going children and lives in a joint family. Therefore, the Court held that capacity of the complainant is also not proved. It is the case of the accused that at the time of advancing ₹1 lakh, blank signed cheque as well as some other blank signed papers were obtained by the complainant. A suggestion was put to the accused when he appeared as DW-1, regarding one agreement, which further supports and corroborates the defence version. Furthermore, in the complaint, there is no such case of the complainant that any agreement was also got executed by the accused.

So, from the perusal of the reasonings given by learned Sessions Judge, Faridabad after re-appreciating the evidence, I find that the findings given by learned lower Appellate Court while acquitting the accused-respondent are correct, as per law and evidence. The evidence has been re-appreciated in right perspective. 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. In no way, the findings given by learned Sessions Judge, Faridabad, can be held as perverse or against the law.

In view of the above discussion, I find that the impugned judgment dated 07.06.2018 passed by learned Sessions Judge, Faridabad, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

January 08, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No