

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

CRM No.A-1609-MA of 2016 (O&M)
Date of decision: May 13, 2019

Maninder Singh Mann

...Applicant

Versus

Mandeep Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Aminder Singh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Maninder Singh Mann has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mandeep Singh, challenging the impugned judgment dated 12.07.2016 passed by learned Judicial Magistrate Ist Class, Sangrur, 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 Maninder Singh Mann filed a complaint against accused Mandeep Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had borrowed a sum of ₹2,60,000/- from him and in lieu of that amount, accused issued a cheque bearing No. 51490 dated 25.01.2014 to discharge his lawful liability, which on presentation for encashment, was returned back unpaid

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 tendered documents, memo Ex.C1, cheque Ex.C2, postal receipt Ex.C3, legal notice Ex.C4 and registered letter Ex.C5. CW-2 Rakesh Kumar Gupta, Assistant, State Bank of India, proved statement of account of accused w.e.f 01.01.2014 to 22.03.2014 Ex.C6.

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 false implication.

Learned JMIC, Sangrur, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 12.07.2016.

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.

Lower Court record was also requisitioned.

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. No receipt or security document was got executed while lending amount of ₹2.60 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction. No income tax return has been produced to show the lending of the amount in question to the accused. All these facts are fatal to the case of the complainant as per law laid down by the Hon'ble Supreme Court in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*.

The complainant admitted in his cross-examination that he is doing the work as faculty of IELTS in Institute of British and American. He knew the accused from the beginning. Earlier, accused used to do work of immigration. The complainant had applied to get VISA through accused. On both the times, when application was moved, it was rejected. It is explained that application was rejected because VISA required point system but the application of the complainant failed to fulfill the requisite points because of which VISA was refused by the Embassy. Learned trial Court held that, therefore, it is clear that relationship between the complainant and accused is of principal and agent. Accused had promised to act as an agent for the complainant and to get VISA approved of the complainant for going abroad. However, this fact has been concealed by the complainant while filing the present complaint. The complainant in his cross-examination also admitted

that accused had returned a sum of ₹2,10,000/- to him on various dates. Then, the legal notice served upon the accused demanding the cheque amount, is invalid, as it is not the case of the complainant that there was another transaction of ₹4,64,000/-. There is no other document to show any loan transaction. Learned Magistrate has also discussed that remaining/outstanding amount as per complainant comes to ₹1,74,000/- whereas the cheque in question has been issued for ₹2,60,000/-.

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 duly supported and corroborated by case of the complainant as well as defence evidence.

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 12.07.2016 passed by learned JMIC, Sangrur, 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.

May 13, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No