

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

CRM No.A-1089-MA of 2017 (O&M)

Date of decision: January 22, 2019

Madhu Sayal

...Applicant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjiv Gupta, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Madhu Sayal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Punjab and Rajneesh Kant Kapila, challenging the impugned judgment dated 21.02.2017 passed by learned Judicial Magistrate Ist Class, Patiala, vide which the accused-respondent No.2 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 if the leave is not granted, then the applicant will suffer an irreparable loss and injury. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Madhu Sayal filed a complaint against accused Rajneesh Kant Kapila under Section 138 of the Negotiable

complainant and borrowed an amount of ₹4,75,000/- from the complainant to meet his domestic needs and promised to return the same in March 2013. In order to discharge his liability, accused issued cheque No.951655 dated 31.03.2013 for a sum of ₹4,75,000/- in favour of the complainant, which on presentation for encashment was returned back dishonoured with the remarks 'Insufficient Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined herself as CW-1 and tendered documents i.e. cheque Ex.C1, memo Ex.C2, legal notice Ex.C3, postal receipts Ex.C4 and Ex.C5 and letter 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 innocence and false implication. He further pleaded that he stood as guarantor for the amount taken by Anil Kaushal in which he had given the cheque to Sunil Sayal as security but he never issued the cheque to Madhu Sayal in discharge of his legally enforceable debt.

Learned JMIC, Patiala, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 21.02.2017.

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. Respondent No.1-State of Punjab is a formal party and nothing to do with present case.

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 such a huge amount of ₹4,75,000/- 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. All these facts are fatal to the complainant's case in view of the law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028.***

Further, the perusal of the record shows that accused is cousin of husband of the complainant. The complainant has filed income tax return showing income for the year 2012-13 of about ₹2 lakhs. The Court held that when the complainant herself is showing her gross income as ₹2 lakhs, then how she has given ₹4,75,000/- to the accused that too without taking any security document. Moreover, from the perusal of statement Ex.D5, it seems that cheque in question was handed over by the accused to the husband of the complainant namely Sunil Sayal. The Court below held that it looks highly improbable that instead of borrowing ₹4,75,000/- from his brother, the accused will directly approach the complainant. It is also held by learned Magistrate that there are lot of improbabilities in the version of the complainant.

Keeping in view the evidence on record, learned trial Court held that defence of accused looks probable and presumption under Section

139 of the Negotiable Instruments Act has been duly rebutted.

From the perusal of the record, I find that learned Magistrate has given the findings after appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence. Otherwise also, in the appeal against acquittal, this Court cannot substitute its opinion when the view taken by the trial Court can also be taken from the evidence on record.

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 21.02.2017 passed by learned JMIC, Patiala, 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 22, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No