

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

CRM No.A-1911-MA of 2016 (O&M)

Date of decision: May 01, 2019

Banarsi Dass

...Applicant

Versus

Darshan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Surinder Garg, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Banarsi Dass has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Darshan Singh, challenging the impugned judgment dated 05.08.2016 passed by learned Judicial Magistrate Ist Class, Faridkot, 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 Banarsi Dass filed a complaint against accused Darshan Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused owe ₹7 lakhs to him, which amount accused took from the complainant on 13.05.2010 being

friendly with him and to discharge his liability, accused issued cheque

bearing No.006388 dated 10.01.2012 for ₹7,00,000/- in favour of the complainant, 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 closed the evidence. 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 as under:-

"The accused has claimed that the complainant and his family is commission agencies and he had been selling his crops through the commission agency. The accused has claimed that Hans Raj son of the complainant got his bank account opened saying that the government is to pay the amount directly to the Agriculturist in his bank account therefore as a security they would get his blank cheque books signed to secure the money etc. As per the accused Hans Raj got his blank signed cheques along with blank Pronote and stamp papers. The accused has alleged that all the firms were running the business in one shop where the complainant also used to work. The accused has further claimed that in April 2010 the firm/complainant etc. failed to pay the crop amount sold through the commission agency and even did not hand over the 'J form' and then he moved complaint against the said commission agency and the complainant party was summoned by the officials of the Market committee to pay the amount of `1 lakhs where the statement was also made by the complainant party that they had adjusted the amount. The accused has claimed that the blank cheques were taken in the presence of his brother Sadhu Singh and Parchinder Singh son of Tek Singh and 4 Kuldeep Singh son of Chand Singh as security out of which the complainant has now misused and forged one of the cheques without any liability on his part. As per the accused he has also filed a criminal complaint against the complainant and other relatives of the complainant who have cheated him and have forged the cheque without any liability. The license of one of the firms was also suspended by the market committee for not making the payment to him (accused) with regard to his produce. The accused has claimed that he has never borrowed the cheque amount and his blank cheque has been misused. The accused has claimed that he had also demanded the copy

of the cheque from the complainant party through his counsel but the same was not given to him.”

In defence, accused examined DW-1 Anil Kumar Gupta, Finger Print Expert, DW-2 Manish Kumar, Clerk, Bank of India, Branch Faridkot, DW-3 Shalinder Singh, Auction Recorder, Market Committee Faridkot, DW-4 Amandeep Arora, Field Officer, Canara Bank, Branch Office, Faridkot, DW-5 Ravinder Kumar Singla, Auction Recorder, Market Committee, Sadiq, DW-6 Kuldeep Singh and DW-7 Parjinder Singh.

Learned JMIC, Faridkot, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 05.08.2016.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Lower Court record was also requisitioned.

I have heard learned counsel for the applicant 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 no receipt or security

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.***

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 defence which is duly supported and corroborated by the defence evidence as well as case of the complainant. Firstly, DW-1 Anil Kumar Gupta, Finger Print Expert, has compared the handwriting of the body of the cheque and opined that it is not in the hands of the accused, which supports the defence version as it was a blank cheque which has been misused. Secondly, DW-2 Manish Kumar has proved that bank account of Darshan Singh has been opened on the basis of attestation of one Hans Raj, who is son of the complainant, which further supports the defence version that account was got opened by son of the complainant. Further, other Dws have also supported the defence raised by the accused. It was also proved on the record that Darshan Singh was customer of Banarsi Dass and sons, New Grain Market, Faridkot and Hans Raj and Deep Arora, also used to run the firm along with other persons.

The perusal of the cross-examination of the complainant further

shows that the complainant was not knowing the accused and he stated that

he met the accused once in a marriage and second time, he stated that he met him in a *karyana* shop. Such a huge amount has been given without even obtaining any receipt. The complainant further improved his version regarding pronote. Pronote is stated to be of 11.01.2011 but it is the case of the complainant that amount was advanced on 13.05.2010, which further supports the defence version that no such amount has been advanced.

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 05.08.2016 passed by learned JMIC, Faridkot, 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 01, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No