

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

CRM No.A-288-MA of 2018 (O&M)

Date of decision: May 07, 2019

Darshan Singh

...Applicant

Versus

Inderjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Namit Gautam, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Darshan Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Inderjit Singh, challenging the impugned judgment dated 21.10.2017 passed by learned Judicial Magistrate Ist Class, Jagraon, 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 Darshan Singh filed a complaint against accused Inderjit Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, in order to discharge his liability and to clear his debts towards the complainant, accused issued a

cheque bearing No.265521 dated 13.05.2011 for a sum of ₹2 lakhs, 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 Ex.C1 to Ex.C5, original cheque, original memo, postal receipt, copy of legal notice and RC/AD.

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. He further pleaded that he never borrowed any amount from the complainant nor ever issued the alleged cheque in favour of the complainant. In fact, the cheque in question was stolen by the complainant from the shop of Karam Singh and Ajmer Singh, to whom he gave four cheques as security for sending his son abroad besides ₹18 lakhs but he failed to send his son abroad and on filing of complaint by his son, said Karam Singh and Ajmer Singh returned the amount of ₹18 lakhs and executed an affidavit with regard to loss of cheques, and after tendering affidavits, complainant's son withdrew the complaint. In defence, accused examined DW-1 Jatinder Singh and DW-2 Manish Patel, Tax Assistant.

Learned JMIC, Jagraon, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 21.10.2017.

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.

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 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.***

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. Dws have deposed as per defence version. Otherwise also, if the

amount of ₹2 lakhs has been advanced, then why no security document has been taken. There are no documents on the record to support the loan transaction. Even if amount is given as a loan, then why no date, month and year has been mentioned.

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 21.10.2017 passed by learned JMIC, Jagraon, 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 07, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No