

CRM-A-2038-MA-2017

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

CRM-A-2038-MA-2017

Date of Decision: 28.02.2019

Krishan Kumar

... Applicant

Versus

Avtar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Maninder Arora, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant-Krishan Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent-Avtar Singh challenging the impugned judgment dated 06.07.2017 passed by learned Judicial Magistrate Ist Class, Rajpura, vide which the 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 further stated that if the leave to appeal is not granted, then the applicant will suffer irreparable loss. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that complainant-Krishan Kumar filed a complaint against accused-Avtar Singh under Section 138 of the Negotiable Instruments Act. The brief facts of the complainant's case are that the

accused borrowed ₹4,55,000/- from the complainant for his domestic needs

PARVEEN KUMAR
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I attest to the accuracy and
integrity of this document

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and the complainant agreed to return the same on demand. When he demanded the above said amount from the complainant, he had issued a cheque No.000001 dated 11.01.2016 of ₹4,55,000/- in favour of the complainant in order to discharge his legal liability. It is further stated that when the complainant presented the said cheque for encashment, the same was returned back with the remarks "***Funds Insufficient***". Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In support of his case, the complainant appeared into witness-box as CW 1 and tendered into evidence various documents.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. wherein he was confronted with the evidence. He denied all the incriminating evidence against him and pleaded false implication. In his defence, the accused himself appeared into witness-box as DW 1.

Learned Judicial Magistrate Ist Class, Rajpura, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 06.07.2017.

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

I have heard learned counsel for the applicant and gone through the record.

From the record, I find that firstly, no date, month or year has been mentioned as to when loan amount was given. No security document or receipt has been obtained at the time of accruing the loan. No particulars

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of any type have been mentioned in the complaint as to whether the amount was paid in cash or through cheque. In the complaint, no particulars have been mentioned that in whose presence and at which place, the money was given and whether the money was paid at one time or in installments. There is no date mentioned as to when the amount was demanded back and there is also no document on record of any type to show the loan transaction. Furthermore, there is no other corroboration of evidence of any type to the case of complainant. The case is fully covered by the law laid down by the Hon'ble Supreme Court in *Vijay vs. Laxman and another, 2013 (1) RCR (Criminal) 1028* and the accused is entitled to the acquittal on this ground.

From the perusal of the findings given by the trial Court, I find that 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 the lower Court.

There is no cogent evidence on record to show the close relationship of the complainant with the accused. It looks unnatural that the complainant will lend such a huge amount and that too without getting any document executed. In his cross-examination, the complainant stated that he is unable to depose about the monthly and yearly income of the accused. He also stated that he does not know the educational qualification of accused-Avtar Singh. He also admitted that cheque was filled with two pen writing, which supports and corroborates the defence version that the

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accused does not know the complainant and he had borrowed Rs.5,000/- from Sukhdev Singh and given a blank cheque to which Sukhdev Singh had handed over to the present complainant. The fact that the cheque was filled with two pen writing, supports the defence version. Further, the complainant has neither even entered the transaction in the diary etc., nor obtained any document of any type from the accused. Further, the complainant has also failed to tell even the date, month and year as to when the transaction took place and there is no other document on record to show the loan transaction. Even copy of statement of bank account has not been produced by the complainant. All these facts in cross-examinations support the defence version. The presumption can be rebutted by raising the probable defence. The complainant himself stated that he had never met the accused after July, 2015. The trial Court held that then how, the accused can issue cheque in dispute in favour of the complainant which is dated 11.01.2016. From the evidence of complainant as well as defence evidence, I find that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

From the perusal of the judgment passed by the Court below, I find that the findings given by the court below are correct, as per evidence and law and the accused has been rightly acquitted. In no way, the impugned judgment can be held as perverse or against the evidence and the same does not require any interference from this Court.

In view of the above discussion, I find that the impugned judgment dated 06.07.2017 passed by learned Judicial Magistrate Ist Class, Rajpura is correct. No ground is made out for grant of leave to appeal and

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therefore, the present application stands dismissed.

28.02.2019
parveen kumar

(INDERJIT SINGH)
JUDGE

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No