

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

CRM No.A-1485-MA of 2014 (O&M)

Date of decision: February 15, 2019

Balbir Singh

...Applicant

Versus

Bhupinder Singh Saini

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.K.Bhatti, Advocate
for the applicant.

Mr.Bhrigu Dutt Sharma, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Balbir Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhupinder Singh Saini, challenging the impugned judgment dated 26.05.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 further stated that applicant will suffer irreparable loss and injury, if present application is not allowed. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Balbir Singh filed a complaint

against accused Bhupinder Singh Saini under Section 138 of the Negotiable Instruments Act. As per complainant's version, he is a bank employee and accused was known to him since 4-5 years. Upon request of accused, complainant advanced a sum of ₹4 lakhs to him on 06.10.2008 as a interest free loan through cheque bearing No.074903 dated 06.10.2008 and accused agreed to return the same in October 2009. In order to discharge part of this liability, accused issued an account payee cheque bearing No.517968 dated 27.10.2009 for ₹1,60,000/-, which on presentation for encashment, returned back dishonoured. Then, accused requested the complainant to present the cheque again. Thereafter, complainant again presented the cheque and it was again 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 himself as CW-1 and tendered documents Ex.C1 to Ex.C10 i.e. bank memo, legal notice, postal receipt etc.

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. The accused further pleaded that he has not taken any loan from the complainant as alleged and in fact he along with Kulwinder Singh and Jaskaran Singh has entered into an agreement to sell their joint plot for the total sale consideration of ₹31,50,000/- to the complainant and out of this amount, complainant has paid the sum of ₹10 lacs as earnest money in two installments, ₹5,00,000/- was paid on 06.10.2008 and another ₹5,00,000/- was paid on 13.10.2008. The said

agreement to sell was cancelled later on with the consent of complainant and

he has received the full and final payment after such cancellation and nothing is due towards him now. The cheque in question has been given being blank signed at the time of entering into such agreement to sell, but even after the cancellaion of this agreement, complainant has not returned the cheque in question and misused the same. He also pleaded that complainant has moved one application before the SSP, Jalandhar for return of the earnest money paid by him and the application was disposed of by the police with the remarks that complainant has received the said amount after getting the agreement to sell cancelled. In defence, accused examined DW-1 Head Constable Nirmal Chand, who proved on record, certified copy of complaint dated 26.07.2009 filed by Balbir Singh to SSP, Jalandhar as Ex.D1/A, certifies copies of statement of Kulwinder Singh during enquiry etc.

Learned JMIC, Jalandhar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 26.05.2014.

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

Notice of the application was issued. Learned counsel for the respondent appeared and contested the application.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties 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

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.

The perusal of the record shows that there is no document of any type to show the loan transaction. The documents on the record and admission of learned counsel for the applicant, proves the factum of agreement to sell and receiving of earnest money etc. If the agreement to sell has been executed on 06.10.2008 and ₹5 lakhs has been paid on that day as earnest money and after seven days, with other document received ₹5 lakhs, then why the complainant will lend ₹4 lakhs on 06.10.2008 without any writing to the accused. He can pay this amount by mentioning the same as earnest money to the accused in the same agreement, which was executed on the same day. The whole version of the complainant looks doubtful.

Further, I have seen the documents produced in defence i.e. complaint Ex.D1/A, which was given by present complainant to SSP, Jalandhar on 08.01.2009 against Jaskaran Singh, Kulwinder Singh, Bhupinder Singh and Gurnek Singh. There is no mention in this application that any amount of ₹4 lakhs was paid as loan to the present accused. The statement given by Balbir Singh before the police on 23.01.2009 nowhere shows that this amount has been paid as loan amount. There is no mention in those proceedings or in the documents i.e. agreement to sell etc. regarding any transaction advancing loan of ₹4 lakhs to the accused.

Furthermore, the complainant, in the complaint, has nowhere

mentioned any particular regarding agreement to sell or paying of earnest

money or any proceeding before the police etc.

In view of the above discussion, I find that the defence raised by the accused is probable one and duly supported and corroborated by documentary evidence produced in defence as well as from the case of the complainant itself and presumption has been duly rebutted.

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 26.05.2014 passed by learned JMIC, Jalandhar, 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.

February 15, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No