

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

CRM No.A-2209-MA of 2017 (O&M)

Date of decision: January 30, 2019

Gurdeep Singh

...Applicant

Versus

Mast Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.C.M.Munjhal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Gurdeep Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mast Ram, challenging the impugned judgment dated 25.07.2017 passed by learned Judicial Magistrate Ist Class, Ferozepur, 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 Gurdeep Singh filed a complaint against accused Mast Ram under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused approached the complainant and requested him in the month of August 2013 for obtaining a

sum of ₹4 lakhs for a short period for some domestic needs. Complainant

advanced a sum of ₹4 lakhs to the accused. Later on, in order to discharge his legal liability, the accused issued an account payee cheque bearing No.680803 dated 18.01.2014 for ₹4 lakhs 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 himself as CW-1 and tendered into evidence, cheque in question, return slip, return memo, legal notice and postal receipt and also tendered other documents Ex.C7 to Ex.C18.

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 had never issued any cheque to the complainant. Rather, he had taken some loan from Avinash Chander and others, who were running a finance company Kamdhenu Finance Co., Jalalabad and these persons, under the garb of advancing him the loan, succeeded to induce him to sign several blank papers, blank cheques, printed from promissory notes and other papers etc. the complainant along with Avinash Chander had created a false documentary evidence for filing the present complaint. Accused also tendered into evidence copy of complaints Ex.D1 to D4 filed by Gurdeep Singh against other persons, Ex.D5 copy of plaint of civil suit titled 'Mast Ram vs. Avinash Chander and Ex.D6, copy of complaint under Section 420, 465, 468, 467, 471 and 120-B IPC titled as 'Mast Ram vs. Avinash Chander and others'.

acquitted the accused-respondent vide impugned judgment dated 25.07.2017.

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 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 lakhs to the accused. Otherwise also, there are no particulars, that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document of any type on record to show the loan transaction.

Further, I find that learned trial Court held that there was no earlier relation between the parties to lend such a huge amount without obtaining any security document or receipt from the accused. The

running an electronic shop and they are the ones who introduced him to the accused in their shop 1-2 years back. This statement of the complainant itself shows that the complainant was not knowing the accused, rather, he was introduced by the complainant's relatives. It looks unnatural that complainant will lend such a huge amount without even obtaining any receipt or document. In cross-examination, the complainant further stated that accused was introduced by one Satnam Singh but said Satnam Singh has not been examined in the present case.

Further, as per complainant's case, accused has approached and requested the complainant in the month of August 2013 for obtaining loan of ₹4 lakhs and it is stated in the complaint that after considering the request, the complainant advanced a sum of ₹4 lakhs but no date has been mentioned as to when the loan was advanced. In cross-examination, now the complainant has stated that loan was advanced in the month of November 2013 for two months, which is material improvement in the version.

The filing of complaints by Gurdeep Singh against various persons, copies of which are Ex.D1 to Ex.D4 show that if the complainant is lending amounts to so many persons, then he might have been maintaining a *katcha* register at least, but no such document has been produced on record, which supports and corroborates the defence that no such transaction has taken place. Further, filing of civil suit and criminal complaint against Avinash Chander and others, also supports and corroborates the defence version.

It is settled law that the 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 supported and corroborated by the case of the complainant itself as well as defence evidence 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 25.07.2017 passed by learned JMIC, Ferozepur, 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 30, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No