

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

CRM No.A-1579-MA of 2015 (O&M)

Date of decision: May 07, 2019

Rajesh Kumar

...Applicant

Versus

Bhola alias Phola

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

INDERJIT SINGH, J.

Applicant-Rajesh Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhola alias Phola, challenging the impugned judgment dated 21.08.2015 passed by learned Judicial Magistrate Ist Class, Yamunanagar at Jagadhri, 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 Rajesh Kumar filed a complaint against accused Bhola alias Phola under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused was having cordial relations with him. Accused borrowed a sum of ₹40,000/- from the

discharge of his existing liability, accused issued a post-dated cheque bearing No.001316 dated 09.06.2014 in the sum of ₹40,000/-, 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 false implication.

Learned JMIC, Yamunanagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 21.08.2015.

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 ₹40,000/- 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. 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 the defence evidence that accused never issued cheque in question in discharge of any legal liability. He also stated that he has never met the complainant. In the month of December 2013, he had taken ₹7,000/- on interest @ 3% per month from one Nitin c/o Nitin Gift House and handed over, blank signed cheque and stamp paper. He had repaid the entire amount to said Nitin but the cheque was not returned. It is also the defence of the accused that he got served legal notice to Nitin demanding back his documents but to no avail. Accused further took the defence that complainant in collusion with Nitin has filed the present complaint against him.

The accused has also proved legal notice Ex.D1 and the postal

receipt, which was served to Nitin. The complainant, in his cross-

examination has stated that he is owner of Nitin Gift Shop but he states that there is nobody with the name of Nitin. If the legal notice is given on 29.05.2014 to Nitin Gift Shop then question of advancing loan on 08.06.2014 of ₹40,000/- to the accused, that too without getting any document executed, looks improbable and unnatural. Furthermore, if the loan of ₹40,000/- was advanced on 08.06.2014, then it also looks unnatural that accused will issue cheque on 09.06.2014 i.e. after one day of borrowing the amount. It is in the cross-examination of the complainant that his income is ₹5000-₹6000/- per month. It looks doubtful that he has given ₹40,000/- to the accused without even taking any security document etc.

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 21.08.2015 passed by learned JMIC, Yamunanagar at Jagadhri, 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