

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

CRM No.A-2223-MA of 2017 (O&M)

Date of decision: March 20, 2019

Ram Chander Sharma

...Applicant

Versus

Pappu Kumar Jha

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.K.Tripathi, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Ram Chander Sharma has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Pappu Kumar Jha, challenging the impugned judgment dated 28.08.2017 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 Ram Chander Sharma filed a complaint against accused Pappu Kumar Jha under Section 138 of the Negotiable Instruments Act. As per complainant's version, he and accused were having friendly relations with each other for last many years. Accused

approached the complainant for purchasing a plot and gave ₹1.50 lakhs in

cash as advance money for purchasing the plot on 06.09.2010 but accused neither gave the plot nor he returned said amount to the complainant. In order to repay the part payment, accused issued a post dated cheque bearing No.000014 dated 05.02.2011 amounting to ₹49,000/-, which on presentation for encashment, was returned back unpaid 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 documents; original cheque, return memo, legal notice, postal receipt and courier receipt.

In defence, accused examined himself as DW-1 and DW-2 Bala Kant, who stated that on 30.03.2011, accused gave ₹15,000/- and on 31.03.2011, accused gave ₹13,000/- to son of Ram Chander.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 28.08.2017.

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 record, I find that the complainant in his cross-examination has stated that he was not knowing the accused before the said transaction of land. He has also nowhere stated that accused was owner of any plot and even no description of the property is given. Learned trial Court held that complainant himself stated that money transaction took place between him and Nandu Jha and accused was also present there. If this is the cross-examination of the complainant, then, it means that complainant has not paid any money to the accused, rather, whatever the transaction is, it is with the father-in-law of accused. The version that accused approached the complainant for purchasing of plot and advanced money was given to the accused, stands falsified from this cross-examination. Rather, it looks that whatever transaction had taken place, was between the complainant and father-in-law of accused. This statement also supports the defence version that cheque in question was given to the complainant as security for the transaction between complainant and father-in-law of accused. The complainant has also not denied the payment of remaining amount of ₹1,01,000/-.

As discussed in the impugned judgment, the complainant in cross-examination has also stated that he has no written proof regarding advancement of this amount and agreement for the purchase of the plot. The Court below held that there are many contradictions in the deposition of the complainant regarding amount, date of issuance of cheque. It is further held that there is no documentary proof to support the version of the complainant regarding advancing money to the accused.

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 28.08.2017 passed by learned JMIC, Faridabad, 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.

March 20, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No