

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

**CRM No.A-800-MA of 2018 (O&M)**

**Date of decision: January 07, 2019**

Kulwinder Kaur

...Applicant

Versus

Bhagmal

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Satbir Rathore, Advocate  
for the applicant.

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**INDERJIT SINGH, J.**

Applicant-Kulwinder Kaur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhagmal, challenging the impugned judgment dated 11.01.2018 passed by learned Judicial Magistrate Ist Class, Dasuya, 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 Kulwinder Kaur filed a complaint against accused Bhagmal under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had visiting terms with her and on his request, ₹2 lakhs was paid by the complainant on

25.03.2015 to the accused. When the amount was demanded back, the

accused issued cheque bearing No.801818 dated 07.09.2015 of ₹2 lakhs, which on presentation for encashment, was dishonoured as accused did not make arrangement for funds for payment against the above-said cheque. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined CW-1 Sucha Singh, Power of Attorney of complainant and CW-2 Sandeep Singh.

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.

Learned JMIC, Dasuya, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 11.01.2018.

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 herself has not

appeared in the witness box, rather, Sucha Singh, Power of Attorney appeared, who was having no personal knowledge regarding advancement of loan amount by the complainant to the accused. The facts regarding loan were told by the complainant to her attorney. If the attorney is stating that complainant had told him all these facts, even then, it will not be treated as personal knowledge of the facts. It is nowhere mentioned in the complaint that at the time of advancing the loan amount, complainant's attorney Sucha Singh was also present. The accused in his defence denied the transactions and has stated that he never met complainant. As the attorney has not personal knowledge of the transaction and there is no other cogent documentary evidence on record to show the transaction, therefore, the complainant has failed to prove the transaction.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted from the case of the complainant. In the present case, complainant did not appear into the witness box and accused could not cross-examine the complainant regarding the transaction, therefore, transaction of advancing the loan of ₹2 lakhs on 25.03.2015 is not proved and there is no prima facie evidence on record to show the transaction. From all these facts, the 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 11.01.2018 passed by learned JMIC, Dasuya, 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 07, 2019  
Vgulati

(INDERJIT SINGH)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
No