

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

CRM No.A-185-MA of 2015 (O&M)

Date of decision: January 14, 2019

Deepak Arora

...Applicant

Versus

Ashish Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ram Bilas Gupta, Advocate
 for the applicant.

 Mr.Yash Dev Kaushik, Advocate
 for the respondent.

INDERJIT SINGH, J.

Applicant-Deepak Arora has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ashish Sharma, challenging the impugned judgment dated 27.11.2014 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 further stated that in case leave to appeal is not granted, then the applicant will suffer irreparable loss. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Deepak Arora filed a complaint

against accused Ashish Sharma under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused approached him and requested for a friendly loan of ₹2,20,000/- with promise to return the same along with interest within a period of two months. Accordingly, complainant gave a friendly loan of ₹2,20,000/- to accused. After expiry of agreed period, he asked accused to return the above said loan amount. Accused after admitting his liability, issued two cheques bearing No.107867 & 107868, both dated 25.08.2012 for a sum of ₹1,10,000/- each, drawn on Punjab & Sind Bank, in favour of the complainant, which on presentation for encashment, were returned back dishonoured with 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 tendered documents; cheques in question Ex.C1 and Ex.C3, bank return memos Ex.C2 and Ex.C4, postal receipt Ex.C5 and legal notice Ex.C6.

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. He further pleaded that he had not issued the cheques in question to the complainant. Both blank signed cheques were misplaced on 04.06.2012 and in that regard, a report was lodged with the police. In defence, accused examined himself as DW-1 and tendered documents; DDR dated 04.06.2012 Ex.D1, copy of application dated 04.0-6.2012 to the Branch Manager, Punjab & Sind Bank Ex.D2 and copy of application dated 28.02.2013 to SHO, P.S. Mujesar Ex.D3.

acquitted the accused-respondent vide impugned judgment dated 27.11.2014.

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.

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 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, though it is stated in June 2012. 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 ₹2.20 lakhs 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 nor there is any witness to corroborate the version of the complainant.

Further, there is no date, as to when the amount was demanded back. There is no document on record to show the loan transaction. No income tax return has been produced to show lending of the amount in question to the accused. All these facts are fatal to case of the complainant as per the law laid down by the Hon'ble Supreme Court in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*.

Furthermore, as per the complainant, amount was paid on one date and the complainant also stated at one occasion that loan was advanced in one go whereas in the cross-examination, he stated that this amount was given on two occasions in the sum of ₹1,10,000/- each, which is a material contradiction in the case of the complainant. This fact along with other facts that there being no particulars, no date, rebuts the presumption under Section 139 of the Negotiable Instruments Act. Further, it looks unnatural that why accused will issue two cheques on the same date and why one cheque was not issued to the complainant.

The accused has examined himself as DW-1 and deposed that cheques have been stolen and he also relied upon the DDR report, applications given to the bank as well as SHO etc., which further support the defence version. The defence of the accused is that cheques in question were mere signed and dated and kept at the back of the cheque book. The purpose of doing so, is for the convenience of the family members, so that they can make payments of bills etc. The DDR was got registered by the accused on 04.06.2012 and on the same day, he gave instructions to the bank with regard to loss of cheques. During the pendency of the complaint, a complaint was also given by the accused to the police at Police Station

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 27.11.2014 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.

January 14, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No