

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

CRM No.A-885-MA of 2018 (O&M)

Date of decision: March 13, 2019

Jagdish Chand

...Applicant

Versus

Suresh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vaibhav Narang, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Jagdish Chand has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Suresh Kumar, challenging the impugned judgment dated 26.02.2018 passed by learned Judicial Magistrate Ist Class, Kaithal, 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 Jagdish Chand filed a complaint against accused Suresh Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, against the payment of pickle, accused in discharge of his existing liability, issued a cheque bearing

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 CW-2 Tilak Raj Girdhar and CW-3 Sh.Parvinder Singh, Advocate.

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. He further pleaded that there was no business transaction between him and the complainant and the cheque in question was never issued by him in favour of the complainant in discharge of any legally enforceable debt or liability. He also pleaded that he and one Mahavir used to be partners. However, due to some dispute, said Mahavir left the joint business. The cheque in question pertains to joint account maintained by the accused and the said Mahavir. After his dispute with the accused, blank cheque in question bearing signatures of the accused was handed over by the said Mahavir to the complainant, which has now been misused by the complainant in filing the present complaint.

Learned JMIC, Kaithal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 26.02.2018.

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 perusal of the record, I find that the complainant has not mentioned any date, month, year as to when the transaction took place. No particulars of any type have been mentioned that on which date, how much pickle has been purchased by the accused and of what value. Further, there is nothing on the record at which place this pickle was purchased by the accused nor any bill was issued. There is no mention that signatures of accused were obtained on any bill or any record. No document of any type has been produced to show this transaction of pickle between the parties. If the complainant is doing the business of pickle and he has supplied pickle costing more than ₹6 lakhs to the accused, then he might have maintained account books/bills etc. but no such document has been produced by the complainant in the evidence. The accused has denied that he has any business transaction with the complainant.

At the time of arguments, it is admitted that cheque in question is from the joint account of the accused and one Mahavir. The defence raised by the accused is probable one, which is supported and corroborated from the case of the complainant itself and from the fact that cheque in question is from the joint account and further from the fact that no date,

month and year nor any type of particulars have been mentioned nor there is

any document to show any transaction between the parties.

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 26.02.2018 passed by learned JMIC, Kaithal, 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 13, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No