

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

**CRM No.A-2555-MA of 2017 (O&M)
Date of decision: February 13, 2019**

Neeraj

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kulwant Singh Dhanora, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Neeraj has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana Renu Chawla, challenging the impugned judgment dated 14.09.2017 passed by learned Judicial Magistrate Ist Class, Hisar, 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 Neeraj filed a complaint against accused Renu Chawla under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused was having friendly terms with the complainant. Accused along with her husband approached the complainant for advancing a sum of ₹1,90,000/- for which the complainant could not refuse and has given the said amount of ₹1,90,000/- to accused in presence

of Ajay Kumar. The accused in discharge of outstanding debt/liability,

issued cheque bearing No.210048 dated 23.11.2015 for ₹1,90,000/- in favour of the complainant, which on presentation for encashment was returned back with the remarks 'Account closed'. 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; cheque, dishonour memo, legal notice, postal receipt, accounts statements. He also examined PW-2 Ajay, PW-3 Rahul Sharma and PW-4 Dinesh Singh, Assistant Manager.

At the close of complainant evidence, accused was examined under Section 313 Cr.P.C. She was confronted with the evidence of the complainant and she denied all the incriminating evidence against her and pleaded her innocence. In defence, accused examined DW-1 Khushbu, Clerk, Indian Bank, DW-2 EHC Amanpreet and DW-3 Parmod Kumar, Clerk and also tendered documents.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 14.09.2017.

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 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 ₹1,90,000/- to the accused. There is no document on record to show the loan transaction. All these facts are fatal to the case of the complainant and learned trial Court has correctly relied upon the law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028.***

The perusal of the record shows that in the present case, the complainant has not proved his financial capacity to lend such a huge amount of ₹1,90,000/-. The defence of the accused is that friend of complainant wanted to marry accused Renu Chawla, however, she refused to marry him and she married with Nitin Chawla. Only to harass the accused, Neeraj along with Ajay conspired and took a cheque from Ajay and misused it against the accused.

The perusal of the record further shows that Neeraj has deposed in his cross-examination that he gave money to accused in the month of May or June, 2015 and no written transaction has been entered between them. He has also deposed that cheque in dispute was given by the accused after 2-3 days of giving money but the cheque is dated 23.11.2015. If the money was given in May or June 2015, then it should have been a post-dated cheque but there is no such case of the complainant. Similarly, from

the cross-examination, I find that it is not clear to the complainant as to

when the cheque was given by the accused. As per complainant, the cheque was given after 2-3 days of borrowing the amount. Again complainant stated that amount was lent in May-June 2015 but the date on the cheque is mentioned as 23.11.2015. Moreover, the account has already been closed by the accused in the year 2009 and the case of the complainant is that cheque has been given in the year 2015, which itself looks unnatural.

In view of the fact that no date, month and year has been mentioned and from the cross-examination of the complainant itself, it is clear that complainant is not knowing as to when the cheque was handed over by the accused and no particulars of loan transactions have been given.

In the present case, the accused has raised probable defence which is supported by the case of the complainant as well as defence evidence and 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 14.09.2017 passed by learned JMIC, Hisar, 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.

February 13, 2019

Vgulati

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No