

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

CRM No.A-986-MA of 2018 (O&M)

Date of decision: February 13, 2019

Naresh Sharma

...Applicant

Versus

Lakhwinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Mamli, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Naresh Sharma has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Lakhwinder Singh and other respondents, challenging the judgment dated 12.04.2018 passed by learned Judicial Magistrate Ist Class, Fatehabad, whereby accused-respondents were 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 Naresh Sharma filed a complaint against accused Lakhwinder Singh, Subhash Chugh and Sushil Lalit under Sections 420, 467, 468, 471 and 34 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMJC,

Fatehabad, are as under:-

“1. The complainant complained that he is a resident of the address given above and he is a law abiding citizen. The accused No.2 and 3 started a company regarding business of construction of the houses and the accused No.2 and 3 appointed him as a Branch Manager for marketing. An appointment letter was issued to him dated 01.01.2013 and in that appointment letter, the accused No.2 & 3 as Managing Director, asked the complainant to deposit the blank signed cheque as security as Branch Manager marketing and the complainant deposited a blank signed cheque bearing No.178 on 15.02.2013 and the accused No.2 & 3 issued a receipt, as Managing Director regarding the receipt of the blank signed cheque. The complainant has never issued the cheque in question in favour of the accused No.1 regarding the amount as mentioned in the cheque but the accused himself in collusion with each other to cause illegal loss to the complainant and for their illegal benefit filled the cheque deposited by the complainant as security, for amount of Rs.23,15,000/- dated 26.02.2013 in favour of the accused No.1 and due to insufficient funds in the account of the complainant the cheque was dishonoured and a false complaint under Section 138 NI Act was filed against the complainant in the Court of SDJM, Ratia titled as “Lakhwinder Singh Vs Naresh Sharma”. The complainant filed a revision petition against the summoning orders in the Hon’ble Sessions Courts. The accused No.1 in his complaint has not mentioned that for which amount the cheque in question has been issued by the complainant in favour of the accused No.1 and the accused in collusion with each other filled the cheque himself and presented the cheque in the blank to fetch the money from the complainant by way of forgery. After coming into knowledge of the complainant, he moved an application to the police and requested to take action against the accused persons. But no action was taken against the accused persons. So the complainant had no other option except to file the present complaint. In this way the accused in collusion with each other, used the cheque as forged and filled the amount himself and used the cheque to cause illegal loss to the complainant and to cause illegal benefit to themselves and prepared a forged document. In this way the accused have committed the offence u/s 420/467/468/471//34 IPC. With these allegations, present complaint was filed.”

On the basis of preliminary evidence, the accused were summoned under Sections 406 read with Section 34 IPC. In pre-charge evidence, the complainant examined himself as CW-1 and placed reliance

upon documents; appointment letter Mark-A and receipt Mark-B.

At the close of complainant's evidence, the accused were examined under Section 313 Cr.P.C. In defence, accused-examined DW-1 Atul Kaushik, Deputy Manager, PNB and tendered into evidence documents Ex.D1 to Ex.D11.

Learned JMIC, Fatehabad, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 12.04.2018.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Lower Court record was also requisitioned.

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the record shows that as per case of the complainant, the cheque in question was given by him to the accused at the time of taking appointment in their bank as Manager and receipt was given to him, which was handed over by accused No. 2 and 3 to Lakhwinder Singh, who by misusing the cheque, filed the complaint under Section 138 of the Negotiable Instruments Act. Further, from the record, I find that Lakhwinder Singh filed a complaint under Section 138 of the Negotiable Instruments Act regarding cheque in question against Naresh Sharma present complainant and Naresh Sharma has been convicted by learned trial Court for two years and fine/compensation of more than ₹23 lakhs has been imposed upon him. The present complainant has taken the same defence in that complaint case which he has taken in the present case but learned trial

Court has not believed his defence. In that complaint case, against

conviction, appeal of the present petitioner is pending, as argued.

Keeping in view the above facts, I find that when version of the accused-present complainant in the case under Section 138 of the Negotiable Instruments Act regarding cheque in question has been disbelieved and the trial Court has relied upon the version of Lakhwinder Singh in that case, therefore, it creates reasonable doubt in the prosecution version. The findings regarding cheque in question and regarding defence have already been given by the trial Court and the matter is sub-judice, in appeal. Secondly, to prove the allegation, present complainant has not proved the receipt which is tendered as Mark-B and similarly, appointment letter which is Mark-A. As these documents are Mark A & B and are not proved as per law, therefore, these documents cannot be looked into.

Now, only remains the oral statement of CW-1. Even CW-1 has not given the facts in detail while appearing in the witness box and oral statement of CW-1 is not supported and corroborated by any other witness. The complainant has failed to prove his case beyond reasonable doubt against the accused.

The perusal of the findings given by learned JMIC, Fatehabad, 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 trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The findings have been given by correctly appreciating

the evidence in right perspective and accused-respondents have been rightly

acquitted.

In view of the above discussion, I find that the impugned judgment dated 12.04.2018 passed by learned JMIC, Fatehabad, 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

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No