

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

CRM No.A-1936-MA of 2014 (O&M)

Date of decision: August 21, 2019

Harpreet Singh

...Applicant

Versus

M/s Mahajan Traders

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Rakhi Sharma, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Harpreet Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent M/s Mahajan Traders, challenging the impugned judgment dated 30.10.2014 passed by learned Judicial Magistrate Ist Class, Amritsar, 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 Harpreet Singh filed a complaint against accused M/s Mahajan Traders under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused took a friendly loan from complainant for immediate financial requirement and

assured that the same would be returned to him within short period. In

order to discharge his legal debt/liability, the accused issued one cheque bearing No.353450 dated 24.03.2012 for a sum of ₹4 lakhs in favour of the complainant, which on presentation for encashment was dishonoured with the remarks 'No such account'. 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; original cheque Ex.C1, bank memo Ex.C2, copy of legal notice Ex.C3 and postal receipt Ex.C4.

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 innocence. He also pleaded that he has no legal debt/liability against the complainant. He was having committee with the complainant in the year 2005-06 and two blank cheques were taken by the complainant from him as a security in the said committee transaction and in that transaction, amount of ₹25,000/- was left to be paid to the complainant. He further pleaded that when he asked for return of said cheques as he was ready to pay ₹25,000/-, then complainant told that both the cheques have been lost and he closed his account at UCO Bank. Due to grudge, complainant himself filled the cheques in question and presented the same for encashment and filed the complaint by misusing the cheques given to him as security.

In defence, accused examined DW-1 Vikas Gupta and DW-2 Amanpreet Singh, who also deposed same facts. Accused also tendered into evidence certain documents Ex.D1 to Ex.D9.

acquitted the accused-respondent vide impugned judgment dated 30.10.2014.

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 and 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 such a huge amount of ₹4 lakhs 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 in view of the law laid down by the Hon'ble Supreme Court in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*.

Further, I find that in defence, accused produced the witnesses to show that there were committee transactions. Learned trial Court, on the basis of evidence found that present complainant had filed several complaints against other persons and by including amount of this case, total

amount comes to ₹22,85,000/-, whereas in the cross-examination, the complainant has stated that he is getting salary of ₹30,000-35,000/- per month. Learned Magistrate held that complainant is financially incapable to lend such a huge amount.

In the present case, the presumption has been duly rebutted by raising probable defence by the accused. DWs have supported the defence version. Furthermore, the fact that complainant had filed complaints against other persons also for recovery of huge amounts and the fact that he is not capable to lend such a huge amount, supports the defence version. Otherwise also, if the complainant is lending such amounts to other persons, then he might be keeping the written record in a register or diary but no such record has been produced, which further supports the defence version.

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 30.10.2014 passed by learned JMIC, Amritsar, 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.

August 21, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No