

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

CRM No.A-2714-MA of 2017 (O&M)

Date of decision: January 29, 2019

Sukhdev Singh

...Applicant

Versus

Simarpreet Kaur @ Rekha

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Tarun Sharma, Advocate for
Mr.R.S.Bajaj, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sukhdev Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Simarpreet Kaur @ Rekha, challenging the impugned judgment dated 14.11.2017 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 Sukhdev Singh filed a complaint against accused Simarpreet Kaur @ Rekha under Section 138 of the Negotiable Instruments Act. As per complainant's version, complainant is NRI and at present residing at U.K. and the complaint is being filed

through his attorney Sh.Tarsem Singh, who is well conversant with the facts of the present case. The accused was doing the service as a care taker of the buildings of the complainant. The accused has been receiving the rent occurring out of the rented accommodations owned by the complainant. The complainant has given authority to the accused to maintain the building as well as his house. Accused took loan of ₹5,00,000/- from the complainant for construction of her house situated at Village Kot Sadiq, Tehsil and District Jalandhar. The loan amount had been given in two installments to the accused in the presence of one Tarsem Singh @ Bobby. The accused left the service of the complainant in the month of September 2015. The complainant came to India in the first week of September 2015 and demanded loan amount from the accused. In order to discharge her legal liability, accused issued cheque bearing No.488441 dated 15.09.2015 for ₹5,00,000/-, in favour of the complainant, which on presentation for encashment, was received back unpaid with the remarks “Drawers Signatures Differs”. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined attorney Tarsem Singh as CW-1 and then his evidence was closed by order.

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 false implication. She further pleaded as under:-

“She only used to work in the house of complainant as a maid and he was giving only Rs.2500/- per month to her. During the said period complainant had developed physical relations with her by force and when she moved the complaint to the police of

P.S. Divn.No.5 on 28.10.2012 he compromised with her and had given a cheque of Rs.4,30,000/- but he had taken back the said cheque from her and never allowed to present the said cheque. During her service in the house of the complainant, he had opened her bank account and he himself had become a nominee in the same. After opening the account when the bank had given the cheque book, the said cheque book was taken by the complainant from her and the cheque in dispute is one of the cheque of the abovesaid cheque book. Complainant later on when did not fulfill the compromise, he in order to pressurize her had forged the cheque in dispute and presented the same. Even the signatures were forged by the complainant. She had never issued the cheque to him nor she have ever taken any amount of Rs.5 lakhs from him. The complainant had neither issued any legal notice to her in her correct address nor the present complaint was filed by mentioning her correct address. She have never received any legal notice and any summon from the court qua the present complaint and she was falsely declared as P.O. by the complainant by mentioning her wrong address. Even Tarsem Singh C.W.1 is not authorised to file and pursue the present complaint. The present complaint is false and fabricated in order to harass her and not to prosecute the complainant qua his illegal acts.”

In defence, accused examined DW-1 N.K.Middha, Sr.Branch Manager, PNB.

Learned JMIC, Jalandhar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 14.11.2017.

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 specific date has been mentioned as to when the loan was demanded back. There is no document to show the loan transaction. Even if it is taken that accused was caretaker or maid of the complainant, even then, why the complainant lent such a huge amount without executing any receipt or security document. As already discussed, there is no document of any type to prove the loan transaction.

Further, the complainant himself did not appear in the witness box, rather his attorney Tarsem Singh has appeared, who has not produced the copy of power of attorney during the evidence, as stated by the Court. As per CW-1 Tarsem Singh, one paper was executed at the time of handing over amount to the accused but said document has not been produced on the record. CW-1 also admitted in cross-examination that legal notice was not sent on correct address, therefore, the Court held that case of the complainant is defective one. Learned Magistrate also held that power of attorney being special power of attorney just for the present case, was ought to be placed on record. It is further held that no witness of such attorney has been examined. In cross-examination, CW-1 also took stand that special power of attorney was not executed in his presence. Non-production of original during trial and stand of complainant that he never witnessed the said power of attorney makes the execution of said power of attorney

doubtful. In cross-examination CW-1 stated that he does not know whether he has mentioned in his affidavit Ex.C.A as to when the amount of ₹5 lakhs was given to the accused and he was not aware if the said amount of ₹5 lakhs was lying in the house of complainant or not. He was not even aware that what was the denomination of notes of said amount. He even stated that one document was signed by accused and same was executed at the time of handing over amount, but no such document has been produced on record.

In view of the evidence, learned trial Court held that attorney was not knowing regarding transaction personally. Further DW-1 has brought bank record and in the account opening form, the nominee is mentioned as Sukhdev Singh, complainant. This account belongs to the accused and in the account opening form, Sukhdev Singh has been mentioned as nominee. The accused was residing in the house of the complainant for number of years, so all the cheque books or account related documents having been with her landlord or employer cannot be outrightly rejected as an alien theory.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the accused has raised probable defence which is duly supported and corroborated from the case of the complainant as well as defence evidence and presumption has been 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

In view of the above discussion, I find that the impugned judgment dated 14.11.2017 passed by learned JMIC, Jalandhar, 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 29, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No