

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

CRM No.A-68-MA of 2014 (O&M)

Date of decision: February 25, 2019

Nand Gopal

...Applicant

Versus

Bhupinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Puja Chopra, Advocate
for the applicant.

Mr.Sanjeev Majra, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Nand Gopal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhupinder Singh, challenging the impugned judgment dated 14.11.2013 passed by learned Judicial Magistrate Ist Class, Pehowa, 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 Nand Gopal filed a complaint against accused Bhupinder Singh under Section 138/142 of the Negotiable Instruments Act. As per complainant's version, he deals in the business of

sale purchase and commission agency in food grains at Anaj Mandi, Pehowa under the name and style of M/s Gopal Trading Company Commission Agent Pehowa, of which complainant is sole proprietor. The complainant gave advances to its prospective customers as an incentive with an undertaking that the agriculture produce will be sold to him. Accordingly, accused used to take advances from the complainant. In discharge of his existing liabilities towards the complainant, accused issued an account payee cheque bearing No.39653 dated 15.02.2011 for a sum of ₹4 lakhs, in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks "Insufficient Funds". Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined CW-1 Subhash Singhal, Asstt. Manager, CBI, CW-2 Rajesh Kumar, complainant's general power of attorney holder and CW-3 Sh.A.K.Goel, 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 and innocence. In defence, accused examined DW-1 Satish Rohilla, Asstt. Manager, Central Bank of India, who brought on record statement of account No.21384 from 16.05.2006 to 04.09.2013 Ex.D3 of accused Bhupinder Singh. The defence of the accused is that no offence under Section 138 of the Negotiable Instruments Act is made out as the complainant has failed to prove that impugned cheque has been issued by the accused for discharge of his legal liability and complainant has

been filed by complainant Nand Gopal and subsequently, after notice, complainant appointed his brother Rajesh Kumar as Power of Attorney to depose on his behalf but his testimony cannot be relied upon as he has no personal knowledge of this case.

Learned JMIC, Pehowa, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 14.11.2013.

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

Notice of the application was issued. Learned counsel for the respondent appeared and contested the application.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties 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. There is no other document of any type to show the loan transaction. There is also nothing on the record whether loan was given at

one go or in how many installments. The complainant has not appeared in the witness box. His Power of Attorney Rajesh Kumar has no personal knowledge of the transaction and on this ground alone, statement of Power of Attorney holder Rajesh Kumar cannot be relied upon. CW-2 Rajesh Kumar has failed to tell the date, month and year on which the cheque amount was given to the accused. He also stated that Nand Gopal told him that Bhupinder has taken the amount in installments. He further deposed that Nand Gopal has not told him that for how many years, the accused has taken the cheque amount. This witness also deposed that Nand Gopal has told him that accused was not the client of the firm from 2010. Rajesh Kumar further stated that Nand Gopal has made him conversant with the facts relating to the accused before he appeared as witness, which fact clearly shows that this witness was not having any personal knowledge. The complainant has himself not come to the witness box to show the liability regarding which the cheque has been issued. 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*.

In view of the above discussion, I find that the defence raised by the accused is probable one and duly supported and corroborated 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

law.

In view of the above discussion, I find that the impugned judgment dated 14.11.2013 passed by learned JMIC, Pehowa, 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 25, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No