

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

CRM No.A-930-MA of 2017 (O&M)

Date of decision: January 22, 2019

Harnek Singh

...Applicant

Versus

Randhir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kamal Narula, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Harnek Singh has filed this application under Section 378(4) read with Section 372 Cr.P.C. seeking permission for leave to appeal against respondent Randhir Singh, challenging the impugned judgment dated 18.03.2017 passed by learned Judicial Magistrate Ist Class, Guruharsahai, 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 further stated that judgment of acquittal has caused grave miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Harnek Singh filed a complaint against accused Randhir Singh under Section 138/142 of the Negotiable Instruments Act read with Section 420 IPC. As per complainant's version,

accused is from his relations and obtained ₹1,50,000/- from him for a short

time. Later, on demand, accused, in order to discharge his legal liability towards the complainant, issued cheque bearing No.191061 dated 12.03.2015 for an amount of ₹1,50,000/- in favour of the complainant, which on presentation for encashment was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined herself as CW-1 and tendered documents i.e. cheque Ex.C1, memo Ex.C2, 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 further pleaded that a false complaint has been filed by the complainant against him. He never borrowed an amount of ₹1,50,000/- from the complainant nor issued cheque in question in discharge of legal liability in favour of the complainant. In fact, his tractor was borrowed by Gurlal Singh son of the complainant from him which was later on involved in a criminal case. The said tractor-trolley was got released by the complainant from the court. Gurlal Singh was imposed with fine by learned JMIC, Guruharsahai. Due to above said tractor-trolley, a dispute arose in between them. Thereafter, the complainant moved an application against him to the SSP, Ferozepur on 03.03.2014 and accused was detained by the police illegally and the complainant under the police pressure managed to get the cheque in question from him. Now on the basis of above said cheque, he has filed this false criminal complaint against him.

acquitted the accused-respondent vide impugned judgment dated 18.03.2017.

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 such a huge amount of ₹1,50,000/- to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction. No income tax return has been produced to show the lending of the amount in question to the accused. All these facts are fatal

Supreme Court in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. Ex.D1 is the application given by the complainant against accused Randhir Singh to SSP, Ferozepur on 03.03.2014. As per the contents of this application, there was dispute between them regarding the sale, purchase and sale consideration of tractor. On 05.07.2014, the complainant got recorded his statement Ex.D2 in the above mentioned application that a compromise has been effected with the accused for the payment of balance of ₹1,30,000/- of tractor in eight installments. The accused has also taken the plea that his tractor was borrowed by Gurlal Singh son of the complainant from him, which was later on involved in case FIR No.207 dated 01.11.2012 under Section 21 (3) of Mines and Minerals (Development & Regulation) Act, 1957. Ex. D3 is the judgment dated 28.04.2014 vide which Gurlal Singh has been released on probation. This case was registered on 01.11.2012 and the application Ex. D1 was moved on 03.03.2014, which supports the defence version. In cross examination, complainant Harnek Singh admitted that a criminal case was registered against his son Gurlal Singh and tractor trolley was owned by accused Randhir Singh. He has also admitted the fact of borrowing of tractor trolley by his son Gurlal Singh from the accused. He has also admitted that accused Randhir Singh was detained by police of P.S. Lakho Ke Behram on his application dated 03.03.2014. The case of the complainant is that the accused has taken loan from him but in entire case he has failed to prove this fact. The cross-examination of the complainant along with documents

supports and corroborates the defence version. The defence of the accused is probable one in view of the evidence on record. The presumption has been duly rebutted by the accused by raising probable defence.

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 18.03.2017 passed by learned JMIC, Guruharsahai, 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 22, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No