

**CRM-1882-2019 and CRM-1886-2019
in/and CRM-A-263-2019 (O & M)**

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2024:PHHC:133875-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM-1882-2019 and CRM-1886-2019
in/and CRM-A-263-2019 (O & M)
Date of decision: 14.10.2024**

Vinod

..... Applicant

V/s

Suman

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

**Present: Ms. Varuna Singh, Advocate
for the applicant.**

**Mr. Kanwarpal Singh Mahey, Advocate,
for the respondent.**

JASJIT SINGH BEDI, J.

CRM-1882-2019

**For the reasons stated in application, same is allowed. Delay of
290 days in filing the application for leave to appeal is condoned.**

CRM-1886-2019

**This is an application under Section 391 Cr.P.C. for leading
additional evidence.**

The learned counsel for the applicant contends that the respondent-accused had admitted her liability of Rs.6 lacs on 07.11.2015 in the presence of the independent witnesses. The pronote had been handed over to the counsel for the applicant-complainant in March 2016 itself but on account of the negligence of the counsel, the said document was never produced in evidence before the Trial Court. It was only pursuant to the acquittal of the accused did the applicant-complainant come to know that the pronote had never been exhibited in the Court. He, therefore, contends that the application under Section 391 Cr.P.C. be allowed for leading additional evidence with respect to the pronote.

The learned counsel for the respondent-accused, on the other hand, contends that the pronote referred to dated 07.11.2015 was never produced before the Trial Court at any stage prior to the passing of the impugned judgment. In fact, the complainant himself had never referred to the same during his pre-charge evidence or after-charge evidence. Therefore, the said document could not be brought on record now, at this stage, by way of the instant application.

We have heard the learned counsel for the parties.

Admittedly, the document which is sought to be brought on record is a pronote purportedly written by the respondent-accused admitting her liability of Rs.6 lacs on 07.11.2015. However, a perusal of the record would reveal that the said document was never referred to by the applicant-complainant in his statement recorded during the course of the Trial. The judgment itself is silent with respect to any such document being adverted

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to. It is not disputed by either party that the said document was not mentioned by the applicant-complainant during his pre-charge or after-charge evidence which were admittedly recorded after 07.11.2015.

In this view of the matter, the application has only been moved to fulfil a lacuna in the case of the complainant and therefore, the same stands dismissed.

CRM-A-263-2019

The present application under Section 378 (4) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 20.12.2017 passed by the Judicial Magistrate Ist Class, Gohana.

2. The complaint was filed by the complainant against the accused with the allegations that one Sunil son of Krishan Sharma had come in contact with the complainant several years ago and had been working on his tractor Agency Panthal at Sonapat road Gohana. A close relationship had developed amongst the complainant and Sunil Sharma. Initially, the said Sunil Sharma had been getting timely financial help from the complainant and had been repaying the same which strengthened their relation. In the year 2010, Sunil introduced the accused to the complainant who was having family relation with the family of Sunil and, thus, she had been coming off and on to the residence of the complainant and friendly relations developed between the wife of the complainant and the accused. Hence, the accused contacted the wife of the complainant in December 2012 and requested to provide aid of Rs. 6 lacs and that too on interest to be repaid within one year alongwith interest @ of 1% p.m. against execution of a pronote and receipt

The complainant taking into consideration the family relationship between them agreed to it. It was promised by the accused that her husband was working in the University and after completion of the house, she would pay the said amount alongwith interest just after one year. However, she failed to repay the same. The complainant contacted the accused at her residence in December 2013 and requested for repayment of his dues. In response to the visit of the complainant the accused along with her husband visited the residence of the complainant on 14.1.2014 and handed over a cheque dated 15.1.2014 of Rs.6 lacs out of account No.232000600069988 being maintained in PNB Khandrai. The complainant deposited the said cheque with his banker for collection from his account, but the said cheque was dishonoured as no such account stood in the name of the accused at PNB Khandrai vide his bank memo dated 15.1.2014 and the intimation was received by the complainant through his banker. The accused had supplied a forged cheque with her signatures and had defrauded the complainant. Thereafter, the complainant served the accused with a legal notice dated 27.1.2014, with the request to make the payment of the cheque amount to the complainant within 15 days from the receipt of said notice but with no result. The said notice was served to the accused person upon her last known permanent address. The accused had, thus, cheated the complainant by giving a false cheque pertaining to some other persons account and hence in this way had committed offences under Section 138/142 of N. I Act as well as offences under Sections 420, 467, 468, 471 read with Section 1208 of

3. The complainant led preliminary evidence and closed the same on 10.10.2014. The complainant tendered the following documents in documentary evidence:-

Sr. Nos.	Documents	Exhibits
1	Cheque bearing no. 183743	Ex.C1
2	Memorandum	Ex.C2
3	Copy of account opening form	Ex.CW2/A
4	Copy of security form register	Ex.CW2/B
5	Copy of account ledger inquiry	Ex.CW2-C
6	Copy of register	Ex.C3
7	Copy of legal notice	Ex.CW3/A
8	Postal Receipt	Ex.CW3/B

4. On the basis of the preliminary evidence led by the complainant, the accused was summoned to face trial for the commission of offences punishable under Section 420, 467, 468, 471 read with Section 120 of IPC vide order dated 31.1.2015, by the court of the SDJM. Gohana.

5. In support of his case, the complainant examined in pre-charge evidence four witnesses, namely, Hari Om as CW-1, Atul Kumar as CW-2, Vinod as CW-3 and Anil Kumar as CW-4, Vinod son of Ved Pal and Anil Kumar. Thereafter, pre-charge evidence of the complainant was closed by Court order dated 10.4.2017.

6. After hearing arguments on charge and on finding a prima-facie case against the accused, she was charge-sheeted for the commission of offences punishable under Sections 420, 467, 468 and 471 read with Section 120-B of Indian Penal Code, to which she pleaded not guilty and claimed trial. Thereafter, on 29.8.2017, the after-charge evidence of the complainant was closed by Court order.
7. On conclusion of the complainant's evidence, the case of the complainant was put to the accused while she was examined under section 313 of Criminal Procedure Code. She denied the allegations and pleaded innocence. In her statement under section 313 of Cr.P.C, she stated that she did not take any loan from the complainant and his wife and denied giving any cheque to the complainant. She denied the signature on cheque Ex.C-1. Thereafter, the case was fixed for defence evidence.
8. In defence evidence, the accused examined the following witnesses:-

Sr. Nos.	Dws	Name of the witnesses
1.	DW-1	Saroj Kumari
2.	DW-2	Ankul Dhull

The accused tendered the following documents:-

Sr. Nos.	Documents	Exhibits
1	Copy of customer information form	Ex.D-1
2	Copy of account opening form	Ex.D-2
3	Authority Letter	Ex.D-3

4	Copy of account opening form	Ex.D-4
5	Copy of ration card	Ex.D-5
6	Copy of account ledger inquiry	Ex. D-6
7	Copy of account ledger inquiry	Ex.D-7
8	Copy of account ledger inquiry	Ex.D-8
9	Copy of affidavit of complainant	Ex.DA

9. Based on the evidence led, the complaint came to be dismissed and the respondent-accused came to be acquitted vide judgment dated 20.12.2017 passed by the Judicial Magistrate Ist Class, Gohana.

10. It is the aforementioned judgment which is under challenge before this Court.

11. The learned counsel for the applicant-complainant contends that a pronote dated 07.11.2015 wherein the respondent-accused admitted her liability to pay a sum of Rs.6 lacs had not been brought on record on account of the negligence and unprofessional behaviour of the counsel for the applicant-complainant at the Trial Court. Had the said document been exhibited, the offence would have been established beyond reasonable doubt. The negligence and misdeeds of the counsel for the applicant-complainant ought to not affect the outcome of the case. The Trial Court had failed to appreciate that the applicant had not claimed any blood relation

been friendly relations. This fact had not been properly appreciated by the Trial Court. The Trial Court had also failed to appreciate the fact that the applicant-complainant had established beyond doubt that he had the requisite funds to advance as a loan to the respondent-accused in lieu of which the cheque in question had been given which had been dishonoured and had been found to have been issued from a non-existent bank account. He, therefore, contends that the application be allowed and leave be granted to file an appeal against the impugned judgment dated 20.12.2017.

12. The learned counsel for the respondent-accused, on the other hand, contends that no fault could be found with the well-reasoned judgment of the Trial Court. The applicant-complainant had failed to establish his case beyond reasonable doubt. The pronote had never been mentioned during the proceedings before the Trial Court at any stage. Therefore, the said document had been created later with a view to fill the lacuna in the case of the applicant-complainant. Therefore, the present application seeking grant of leave to appeal is liable to be dismissed.

13. We have heard the learned counsel for the parties and examined the record.

14. The case of the applicant-complainant is that the accused was introduced to the complainant by one Sunil Sharma in 2010 and his wife developed family relation with the accused and because of that she gave Rs.6 lacs in December 2012 to the accused. The complainant has not led any evidence to show that the accused was having any friendly relations with the complainant or his wife. For the reasons best known to him, the

complainant failed to examine his wife who could have deposed that the accused was known to her since 2010 and had asked for financial assistance in December 2012. In these circumstances, it can not be said that accused was having any relations with the complainant or his family.

15. The applicant-complainant in his cross-examination of pre-charge evidence stated that he was having Rs. 6 lacs and took some amount from relatives and some amount was taken from commission agents. However, he could not tell as to from which relative he borrowed the amounts. However, in after charge cross-examination, the complainant stated that he had given the amount to the accused by borrowing the same from his father and brother. Apparently, there is a contradiction between the different statements of the complainant regarding the source from which he arranged Rs.6 lacs. Further, it is hard to believe that the complainant would borrow the amount from his relative so that he could give the same to the accused, considering the fact that accused was not a close relative of the complainant or his wife.

16. The Complainant in his complaint as well as cross-examination of pre-charge evidence stated that his wife had written a note regarding giving Rs. 6 lacs to the accused and on that writing the accused had affixed her signatures. He further stated that he tore the writing in December 2013. However, in after-charge cross-examination, the complainant stated that his wife did not make any note regarding giving of loan to the accused. So, there is another contradiction between the testimony of complainant regarding the execution of a pronote and receipt by the accused. Even if it is

believed that any such writing was in possession of the complainant, there is no explanation as to why that writing was destroyed by the complainant without recovery of the loan amount.

17. The pronote dated 07.11.2015 never saw the light of the day during the course of the Trial because of which an application under Section 391 Cr.P.C. for leading additional evidence with respect to the pronote already stands dismissed. Therefore, the said document also does not further the case of the applicant-complainant.

18. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

19. In view of the aforementioned discussion and keeping in view the law laid down in *Kallu @ Masih & Ors. Case (supra)*, we find no reason to interfere with the well reasoned judgment dated 20.12.2017 passed by the Judicial Magistrate Ist Class, Gohana whereby accused-respondent, namely, Suman has been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 14, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No