

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

(i) CRM No.A-239-MA of 2013 (O&M)

Lakhwinder Singh

...Applicant

Versus

Janak Raj and another

...Respondents

(ii) CRM No.A-264-MA of 2013 (O&M)

Lakhwinder Singh

...Applicant

Versus

Janak Raj and another

...Respondents

(iii) CRM No.A-304-MA of 2013 (O&M)

Lakhwinder Singh

...Applicant

Versus

Janak Raj and another

...Respondents

Date of decision: July 25, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Namit Khurana, Advocate
for the applicant.

None for respondent No.1.

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

All the above-mentioned cases are taken up together for

decision as the point for the determination in all the cases is the same.

Applicant-Lakhwinder Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Janak Raj and State of Haryana, challenging the judgments dated 01.10.2011 passed in complaints No.2791, 2832 and 2830 by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby the accused-respondent was acquitted.

It is mainly stated in the applications that accompanying appeals are likely to succeed on the grounds taken therein. It is further stated that learned trial Court while acquitting the accused has not appreciated the facts on record and evidence adduced by the applicant in a true and correct perspective and passed the judgments on the basis of conjectures, surmises and presumption which are liable to be set aside. It is, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant Lakhwinder Singh filed complaints against accused Janak Raj under Section 138 of the Negotiable Instruments Act read with Section 420 IPC.

As per complainant's version, the accused in discharge of his existing liability issued cheques bearing No.505162 dated 05.05.2007, 505161 dated 29.05.2007 and 505164 dated 20.06.2007 each amounting to ₹50,000/-. The cheques on presentation for encashment were returned back with the remarks 'Insufficient Funds'. Thereafter, legal notice was served upon the accused and when the amount was not paid, then the complaints were filed well within time.

Learned JMIC, Yamuna Nagar at Jagadhri, vide impugned judgments dated 01.10.2011, after appreciating the evidence, acquitted the

accused-respondent.

Notice of motion was issued and learned State counsel appeared. None appeared on behalf of respondent No.1 despite service.

I have heard learned counsel for the applicant as well as learned State counsel and have gone through the record, especially the judgments passed by learned Magistrate.

From the perusal of the judgment passed by the Court below, I find that the findings have been given as per evidence and law. In no way, the judgments can be held as perverse or against the evidence. The evidence has been appreciated in right perspective. 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.

Admittedly, there is presumption under Section 139 of the Negotiable Instruments Act in favour of the complainant but at the same time, this presumption can be rebutted by the accused by raising probable defence. The perusal of the record shows that in the complaints, no particulars have been given i.e. on which date, in which month and year the loan was advanced. Nothing has been mentioned that in whose presence, at which place and in which mode, the payment was made i.e. whether in cash or through cheque etc. No document of any type has been got executed from the accused while advancing the loan. There is nothing as to when the loan was demanded back. There is no cogent document on the record to prove the loan transaction. There is nothing on the record to show as to from where this amount has been withdrawn. The amount in question has not been shown in income tax return etc.

Learned Magistrate while appreciating the evidence held that

complainant is a landlord by profession and he has not maintained any account and there is no evidence to prove the financial capacity of complainant to advance loan. The Court held that if the plea of the complainant is taken as it is that loan of ₹1,50,000/- was advanced to the accused, for the payment of which, the cheques in question have been issued, even then, it is strange that accused had issued first cheque No.505162 dated 05.05.2007 to the tune of ₹50,000/-, second cheque No.505161 dated 29.05.2007 to the tune of ₹50,000/- and third cheque No.505164 dated 20.06.2007 to the tune of ₹50,000/-. The accused has issued two cheques at the difference of five days and one cheque at difference of fifteen days. It is also discussed by the Court below that complainant presented the cheque Ex.C1 for encashment on 29.05.2007 and again accepted the cheque on 20.06.2007 and presented the same for encashment on 26.07.2007. Learned Magistrate held that if the accused has to repay the loan amount of ₹1,50,000/-, there was no need for the accused to issue three cheques of ₹50,000/- each. Accused could have issued one cheque to the tune of ₹1,50,000/-.

The Court below further held that when one cheque was dishonoured on 29.05.2007, then there was no reason for the complainant to accept the third cheque despite the dishonourment of aforesaid cheque. The Court also held that complainant's case is that accused handed over the cheques to Gopal, who gave it to the complainant but Gopal has not been examined.

The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence, which is supported and corroborated by the evidence of the

complainant and defence version. There is no document to show the loan transaction etc., which supports the defence version.

In view of the above discussion, I find that the impugned judgments dated 01.10.2011 passed by learned JMIC, Yamuna Nagar at Jagadhri, are correct, as per law and evidence and do not require any interference from this Court. No ground is made out for grant of leave to appeals and therefore, all the three applications stand dismissed.

July 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No