IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-690-MA of 2013 (O&M)

M/s Sach Steel Corporation

...Applicant

Versus

Naveen Kumar

...Respondent

(ii) CRM No.A-702-MA of 2013 (O&M)

M/s Sach Steel Corporation

...Applicant

Versus

Naveen Kumar

...Respondent

(iii) CRM No.A-721-MA of 2013 (O&M)

Ritu Aggarwal

...Applicant

Versus

Naveen Kumar

...Respondent

Date of decision: August 09, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pankaj Bali, Advocate
for the applicants.

Mr.J.S.Rana, Advocate for
Mr.Vinod S.Bhardwaj, Advocate
for the respondent.

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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.

Applicants have filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Naveen Kumar, challenging the judgments dated 05.12.2012 passed in complaints No.2427-2, 356/2 and 1667/2 by learned Judicial Magistrate Ist Class, Ambala, 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 erred in scrutinizing the evidence present on the case file and wrongly determined the facts and law produced and relied upon by the applicant. It is, therefore, prayed that leave to file appeals be granted to the applicants.

As per the record, the complainants M/s Sach Steel Corporation and Ritu Aggarwal, Proprietor of Sach Steel Corporation filed complaints against accused Naveen Kumar under Section 138 of the Negotiable Instruments Act read. The facts are taken from CRM No.M-690-MA of 2013. The brief facts of the case as noted down in the judgment dated 05.12.2012 passed by learned JMIC, Ambala, are as under:-

> *"The present complaint has been filed by the complainant with the allegations that the complainant is the proprietor of the firm known was Sach Steel Corporation, near old Anaj Mandi, Ambala City and is also authorized dealer of General and Iron Steel etc. The accused is having business transaction with the complainant and had been purchasing the goods from the complainant and also take dasti loan etc. and in this way in the year 2007-08, the accused was liable to pay a sum of Rs.25,00,000/- to the complainant and the complainant time and again requested to clear the outstanding, but the accused did not pay the said amount. On 15.07.2008, the accused issued ten post dated cheques bearing No.626461 to 626470 as mentioned in para No.3 of the complaint amounting to Rs.50,000/- each. Cheque bearing No.626461 and 626462 amounting to Rs.1.5 lacs each were dishonoured and a complain under Section 138 of the Negotiable Instruments Act is pending. Cheque bearing No.626463 and 626464 could not*

> *be presented cheque No.626465 to 626469 amounting to Rs.50,000/- each (hereinafter to be referred as the cheques in question) for encashment but the same were dishonoured on account of insufficient funds. Cheques in question were again presented and again the fate was same. Accused also admitted the liability of Rs.21 lacs vide compromise/letter dated 15.7.2008 and it was further admitted that the balance payment will be settled by the accused with the husband of the complainant who is missing after his return. The complainant on the assurance of the accused, presented the aforesaid cheque in her bank Allahabad Bank, Ambala City but the same were dishonoured due to insufficient funds. Thereafter, complainant served a legal notice dated 31.8.2009 vide registered AD upon the accused, which was refused to receive and the accused failed to make the payment of the cheque despite the legal notice within the stipulated period of 15 days. Hence, this complaint."*

After the evidence of the complainants, the accused was examined under Section 313 Cr.P.C. and in defence, examined Ahlmad Ritu, who proved Ex.D1, copy of the complaint filed by the complainant against Arvind Dhiman, brother of the accused, wherein accused has allegedly issued cheque of ₹21,50,000/- in discharge of his brother's liability and Ex.D2 i.e. Cheque dated 11.11.2009. These documents have been adduced in defence to show the act and conduct of the complainant as to his second complaint.

Learned JMIC, Ambala, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 05.12.2012.

Notice of motion was issued in all the applications and learned counsel for the respondent appeared in each application.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that CW-1 Ritu Aggarwal, complainant in cross-examination admitted that she is proprietor of the firm for the last 4-5 years and before her, her husband Rajeev Aggarwal was the proprietor. She shown her inability to tell about the period of business transaction with the accused. Though, she stated that accused Naveen Kumar took the material from her firm for the sale consideration of ₹7-8 lacs on credit. She admitted that there is no signature of the accused on the bills since the order was given on telephone and the material was taken through her husband as she used to work as a part time on her shop. She also stated that the accused has taken the material from her firm for the consideration of ₹7-8 lacs in the year 2008 and the same has been shown by her in sale return. She also stated that accused has written in his own handwriting compromise/undertaking regarding his liability of paying ₹21 lacs against liability of ₹25 lacs. She further stated that the alleged loan amount was given to the accused in cash by her husband though this cash transaction was not accrued in her presence and no written record except compromise/undertaking is there regarding the same. She also stated that she has not signed the compromise.

Learned JMIC, Ambala, after discussing the evidence of the complainant and the defence evidence, held that complainant Ritu Aggarwal is sole proprietor of the firm and there is no document on record to show the loan transaction of such a huge amount i.e. more than ₹18 lacs and that loan was stated to be given by husband of present complainant to the accused. Further, the loan transaction has not taken place in her presence. The Court below held that such a huge amount cannot be given in cash as per Section 269 ss of the Income Tax Act.

Furthermore, the firm is giving the loan and its entry is not made in the record nor any signatures or security document was taken from the accused. The bills of the material sold are also not having signatures of the accused nor there is any other record to show the signatures of the accused regarding receipt of material etc. The person who issued the bills has also not been examined. The defence was taken that the security cheques were misused by the complainant. Further, it is the case that earlier husband of the complainant Ritu Aggarwal was the sole proprietor but he has been missing for some years.

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. 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.

In view of the above discussion, I find that the impugned judgments dated 05.12.2012 passed by learned JMIC, Ambala, 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.

August 09, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **No**