

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

(i) CRM No.A-1237-MA of 2014 (O&M)

S.Pritpal Singh

...Applicant

Versus

Gaurav Kumar

...Respondent

(ii) CRM No.A-1242-MA of 2014 (O&M)

S.Pritpal Singh

...Applicant

Versus

Gaurav Kumar

...Respondent

Date of decision: August 11, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Bansal, Advocate
for the applicant.

Mr.Sandeep Arora, Advocate
for the respondent.

INDERJIT SINGH, J.

CRM No.23518 of 2014 in CRM No.A-1237-MA of 2014

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 7 days in filing the application seeking leave to appeal, is condoned.

CRMs No.A-1237-MA and A-1242-MA of 2014

Both the above-mentioned cases are taken up together for

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

Applicant-S.Pritpal Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Gaurav Kumar, challenging the judgments dated 12.05.2014 passed in cases No.29817/2013 and 28754/2013 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 accused-respondent failed to rebut the presumption under Section 139 of the Act. It is, therefore, prayed that leave to file appeals be granted to the applicants.

As per the record, the complainant S.Pritpal Singh filed complaints against accused Gaurav Kumar under Section 138 of the Negotiable Instruments Act.

As per complainant's version, the accused raised loan of ₹15,000/- on 15.10.2006 (in case no.29817/2013) and ₹15,000/- on 15.10.2007 (in case no.28754/2013) for his personal necessity and in order to discharge his legal and financial liability, accused issued cheques bearing No.309869 dated 18.04.2007 for a sum of ₹12,000/- and No.309895 dated 15.04.2009 for a sum of ₹11,000/- respectively. The cheques on presentation for encashment were returned back unpaid with the remarks 'Funds Insufficient' (in case no.29817/2013) and 'No such account' (in case no.28754/2013). Thereafter, legal notices were served upon the accused and when the amount was not paid, then the complaints were filed well within time.

After completion of the evidence, the accused was examined

under Section 313 Cr.P.C. and he denied the allegations. Accused has further stated that he has returned the loan amount as well as interest to the complainant. The complainant assured him that he will return the signed blank cheques to him. When he demanded his signed blank cheques, the complainant said that said cheque has been misplaced but he did not give him the said signed blank cheques and misused the signed blank cheques given to him.

Learned JMIC, Jalandhar, vide impugned judgments dated 12.05.2014, after appreciating the evidence, acquitted the accused-respondent in both the complaints.

Notice of motion was issued and learned counsel for respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record, especially the judgments passed by learned Magistrate.

At the time of arguments, nothing has been pointed out as to how the findings given by learned Magistrate are perverse or against the evidence. 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 given by learned Court below are illegal. From the perusal of the judgment passed by the Court below, I find that the findings have been given by appreciating the evidence in right perspective. In no way, the judgments can be held as perverse or against the evidence.

The complainant in the evidence has admitted that 40-45 cases under Section 138 of the Negotiable Instruments Act against various persons are pending before the Court at Jalandhar. A suggestion was put to

the complainant that more than 200 cases are pending, which he denied. From the cross-examination of the complainant, it is clear that complainant is doing the money lending business without any licence. If so many complaints have been filed by the complainant, then definitely the complainant is maintaining the record of lending the money and amounts received by him. The accused has stated that he has paid amount to the complainant along with interest but the complainant is not producing the record.

Furthermore, as stated by the complainant, he is charging interest from the borrowers at the rate of one per cent or two percent or three per cent. The loan amount was of ₹15,000/- each in both the cases but the cheques were of ₹12,000/- (in case No.29817/2013) and of ₹11,000/- (in case No.28754/2013), which means that the accused had at least paid some amount, as per the version of the complainant. But it is not explained in the complaint by the complainant as to how much amount was paid in principle and how much amount was paid as interest. The version of the accused looks probable. The presumption under Section 139 of the Negotiable Instruments Act is duly rebutted and the complainant has not produced the cogent evidence to prove the liability. Otherwise also, complainant himself admitted that he is giving loan to various persons since the year 1999, therefore, it is clear that he is maintaining the record of each and every person and by not producing the same on record, adverse inference is to be drawn against him.

In view of the above discussion, I find that the impugned judgments dated 12.05.2014 passed by learned JMIC, Jalandhar, 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, both the applications stand dismissed.

From the record, as it is clear that so many cases are pending before different Courts at Jalandhar, therefore, learned Sessions Judge, Jalandhar, is directed to look into the matter and if it is feasible, to list all the cases filed by the present complainant under Section 138 of the Negotiable Instruments Act, to be tried by one Court. Copy of this order be sent to learned Sessions Judge, Jalandhar, for compliance.

August 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No