

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-1258-MA of 2014 (O&M)

Gurnam Gir

...Applicant

Versus

Amandeep Singh

...Respondent

(ii) CRM No.A-1368-MA of 2014 (O&M)

Angrej Gir

...Applicant

Versus

Amandeep Singh

...Respondent

(iii) CRM No.A-1659-MA of 2014 (O&M)

Chand Gir

...Applicant

Versus

Amandeep Singh

...Respondent

Date of decision: May 10, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Puja Chopra, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.24215 of 2014 and CRM No.26602 of 2014

Heard.

For the reasons mentioned in the applications, the same
are allowed. Delay of 288 days in filing the application seeking leave

to appeal, is condoned.

CRM No. 33198 of 2014

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 366 days in filing the application seeking leave to appeal, is condoned.

CRM Nos.A-1258-MA, A-1368-MA and A-1659-MA of 2014

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-Gurnam Gir, Angrej Gir and Chand Gir have filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Amandeep Singh, challenging the judgments dated 08.08.2013 passed in complaints No.1869, 1935 and 1937 by learned Judicial Magistrate Ist Class, Patiala, 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 JMJC, Patiala has wrongly dismissed the complaints without appreciating the facts and circumstances of the case. It is, therefore, prayed that leave to file appeals be granted to the applicants.

As per the record, the complainants filed complaints against accused Amandeep Singh under Section 138 of the Negotiable Instruments Act read with Section 420 IPC.

The facts are being taken from CRM No.A-1258-MA of 2014.

As per complainant's version, he had sold his share in agricultural land to Smt.Nachhatar Kaur and Jaspal Kaur through registered sale deed. Both the purchasers are closely related to accused and due to which, out of total sale consideration, the accused has paid ₹30,00,000/- by way of issuing four cheques bearing No.501406 to 501409 for sum of ₹7,50,000/- each dated 12.06.2009. The cheques on presentation for encashment were returned back with the remarks 'Funds Insufficient'. Thereafter, legal notice was served upon the accused and when the amount was not paid, then the complaint was filed well within time.

The complainant examined himself as CW-1, CW-2 Amarjit Gir and CW-3 Sh.Navdeep Gupta, Handwriting and Finger Prints Expert, Patiala and closed the evidence.

The accused was examined under Section 313 Cr.P.C. and he denied all the allegations. He further stated that the complainants sold their land to their relatives but there was neither passage nor there was any tubewell connection for irrigation of the land. The complainant and others agreed that they will receive the amount of ₹30 lacs as a part sale consideration later on, after getting a passage to the land. On the day of execution of sale deed, the complainant along with others took the cheques of ₹30 lacs from him as security. When the accused along with his relatives went to the Halqa Patwari for sanctioning of the mutation, then they came to know that the land

in question belongs to Gram Panchayat and litigation is going on for the title of the land. At the time of execution of sale deed, the complainant has not disclosed this fact to him as well as his relatives. Then he called the complainant and pressurized them to return the money. The complainant returned his previous cheques and promised that they will get the title of the land cleared or will return the money to the purchasers. It is further deposed by the accused that after the gap of three years, he came to know that the complainant and others have lost case in every court and lost their title in respect of the land. When he pressurized the complainants to return the amount, they again started making excuses that they will get the title cleared. He again gave them security cheques of ₹30 lacs and they executed an agreement dated 12.06.2009 in the presence of witnesses. The conditions of the agreement executed against the security cheques were mentioned in the agreement and the complainant has not fulfilled the conditions laid down in the agreement.

In defence, accused examined DW-1 Gopal Krishan Dhir, who deposed regarding the agreement Ex.D2 executed by the complainant along with others with the accused vide which accused along with other persons returned four original cheques for the sum of ₹7,50,000/- each, which were received by the complainant and in lieu of said four cheques, complainant along with others obtained four new cheques bearing Nos.501406 to 501409 dated 12.06.2009 for ₹7,50,000/- as security and it was settled between the complainant and accused that in case they failed to fulfill the terms and conditions

as settled between them till 12.06.2009, then the four cheques so issued by the accused shall be cancelled and complainant cannot get the same encashed. Accused also examined DW-2 Inderjit Singh, Handwriting and Fingerprint Expert, Patiala, who proved his report that disputed signatures on the agreement and on the endorsement of stamp papers are of the complainant. DW-3 Suresh Mittal, Patwari, deposed regarding the ownership of the land. He also stated that possession was delivered to Gram Panchayat on 08.05.2012.

Learned JMJC, Patiala, vide impugned judgments dated 08.08.2013, after appreciating the evidence, acquitted the accused-respondent.

I have gone through the record and also the record of lower Court.

It is admitted between the parties that the complainant lost the title of the land upto to higher Court, which he sold to the accused. As per statement of DW-3 Suresh Mittal, Patwari, the possession of the land was also got delivered to the Gram Panchayat and Gram Panchayat was declared as owner. So, as the complainant was not owner of the property, he could not sell the same. The accused has not purchased the property due to defective title of the complainant and the land was now owned and possessed by the Gram Panchayat. Therefore, the cheques which were issued as per the agreement Ex.D2, were issued only as security and were to be encashed upon the fulfillment of the terms and conditions as given in Ex.D2. As those terms and conditions were not fulfilled by the complainant and rather,

he lost the title upto to higher Court, therefore, there was no liability of any type existing for payment of ₹30 lacs. So, these cheques were not issued in discharge of legal enforceable debt.

The findings given by learned JMJC, Patiala are correct and as per law. Nothing has been argued as to how the findings given by learned Court below are perverse or against the law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below.

In view of the above discussion, I find that the judgments dated 08.08.2013 passed by learned Judicial Magistrate 1st Class, Patiala, are correct, as per law and evidence and do not require any interference from this Court.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, all the applications stand dismissed.

May 10, 2016
Vgulati

(INDERJIT SINGH)
JUDGE