

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

(i) CRM No.A-1810-MA of 2015 (O&M)

Charanjit Kaur

...Applicant

Versus

Sanjay Sharma

...Respondent

(ii) CRM No.A-1836-MA of 2015 (O&M)

Charanjit Kaur

...Applicant

Versus

Sanjay Sharma

...Respondent

Date of decision: November 22, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.K.Bawa, Advocate
for the applicant.

INDERJIT SINGH, J.

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 has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sanjay Sharma, challenging the judgments dated 03.09.2015 passed in criminal

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 JMIC, Yamuna Nagar has wrongly, illegally and erroneously acquitted the respondent-accused. It is, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant Charanjit Kaur filed complaints against accused Sanjay Sharma under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused used to do the business of cable net work under the name and style of M/s Triple S in Yamuna Nagar and during the course of said business, he used to take the money from the complainant and used to return back the same after some time. The accused took a friendly loan of ₹4.5 lakhs along with other amount and in discharge of his existing liability towards the complainant, the accused issued; cheque bearing No.444530 dated 02.11.2012 in the sum of ₹70,000/- and cheque bearing No.444535 dated 12.10.2012 in the sum of ₹3 lakhs (in CRM No.A-1836-MA of 2015) and cheque bearing No.445790 dated 07.10.2012 in the sum of ₹3 lakhs, in favour of the complainant, which on presentation for encashment before the bank, were returned back unpaid with the remarks 'Funds Insufficient'. Legal notices were issued. When the amount was not paid, then the complaints were filed well within time.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 03.09.2015.

through the record.

From the record, first of all I find that no date, month and year has been mentioned as to when the loan was taken. No particulars have been mentioned that at which place, in whose presence and through which mode the amount was given. Even it has not been mentioned in the complaints as to how much amount has been given to the accused. It is stated that ₹4.5 lakhs along with other amount has been given. It looks improbable that the complainant is not knowing the amount which she had given to the accused as friendly loan. If she could say ₹4.5 lakhs, then what it means that along with other amount. There is no mention whether any other amount was given earlier or along with ₹4.5 lakhs. The complainant relied upon the writing stated to be given by the accused that he will return the same at the earliest but no such writing has been produced by the complainant. There is no document on the record to show the loan transaction. No document was got executed and proved on the record, at the time of borrowing of the loan by the accused. The complainant has not taken any security document from the accused at the time of advancing such a huge amount. There are no particulars as to when the loan was demanded back. Further, the complainant stated that she had received reply to the legal notice. She had mentioned that fact of having given friendly loan of ₹6,70,000/- in her legal notice sent to accused. She also stated that she was not having any business dealing with the accused. She further stated that accused himself or her own daughter had filled up the cheques in question. She further stated that she had given ₹6,70,000/- in cash to the accused. If this is so, then why this fact has not mentioned in the complaint. Why she had mentioned ₹4.5 lakhs

along with other amount.

The Court below further found that complainant stated in the cross-examination that she had not withdrawn the money from any bank account. Though the complainant states that she had shown the fact of having giving the money in her income tax return but photocopy of the same mark-A has been produced, which is also not proved by the complainant and no reliance can be placed on the photocopy of the income tax return. She also stated in cross-examination that she cannot tell as to when the accused has taken the money from her for the first time.

Learned Magistrate, after appreciating the evidence in right perspective, found in the facts and circumstances, that the version of the complainant is discrepant regarding advancing of loan and in view of the fact that no particulars are mentioned nor any document is there to support the loan transaction and keeping in view the defence version, held that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted and defence version is probable.

From the perusal of the judgments 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. 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 are perverse or against the law and what illegality has been committed by learned Court below.

In view of the above discussion, I find that the impugned judgments dated 03.09.2015 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, both the applications stand dismissed.

November 22, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No