IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-257-MA of 2014 (O&M)

Jitender Pal Singh

...Applicant

Versus

Raj Singh

...Respondent

(ii) CRM No.A-262-MA of 2014 (O&M)

Jitender Pal Singh

...Applicant

Versus

Raj Singh

...Respondent

Date of decision: September 06, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunil Saharan Advocate
for the applicant.

Mr.Mukesh Yadav, Advocate
for the respondent.

****

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 Raj Singh, challenging the judgments dated 13.11.2013 passed in complaints No.545-II and 546-II of 2009 by learned Judicial Magistrate Ist Class, Hisar, 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 if the applications are not entertained, then the applicant would suffer irreparable loss. It is, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant Jitender Pal Singh filed complaints against accused Raj Singh under Section 138 of the Negotiable Instruments Act. The facts are taken from CRM No.M-262-MA of 2014. As per complainant's version, the accused had the good relations with the complainant being his friend and he had borrowed a friendly loan from the complainant. In order to discharge that legally recoverable debt, the accused had issued two cheques bearing No.027314 dated 16.05.2009 and No.027312 dated 15.05.2009 each for an amount of Rs.50,000/- (Rs.Fifty thousand only) and also issued two cheques bearing No.027315 dated 15.5.2009 and No.027313 dated 17.05.2009 each for an amount of Rs.50,000/- in CRM No.M-257-MA of 2014, drawn on Axis Bank Limited, Rani Bazar Road, Bikaner, in favour of the complainant. When the cheques in question were presented to the Bank, the same were returned unpaid with the remarks "Insufficient Funds". Legal notices were issued. When the amount was not paid, then the complaints were filed well within time.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 13.11.2013.

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

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. 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.

Learned Magistrate after discussing the evidence found that one of the condition under Section 138 of the Negotiable Instruments Act is that cheque in question must be drawn by the accused to discharge his legal enforceable debt or liability. The Court held that in the complaint, the complainant did not disclose the amount which was borrowed by the accused and the date, year or month in which it was so borrowed. In the statement under Section 313 Cr.P.C., the accused has denied the factum of borrowing of the loan. The complainant has examined himself as a witness and in his affidavit also, he has reiterated the facts of the complaint. The Court below held that mentioning of the year and the amount, which was so borrowed, is very crucial in such cases as the debt/loan can be time barred debt. There is no document on the record, even to show that on which date, in which month and year and how much amount was given or whether the amount as been given in lumpsum or at several occasions. There is no document to show the loan transaction. There is nothing to show as to when the amount was demanded back. No security document was obtained at the time of granting the loan. There is nothing in the complaint whether the loan was given on interest or not. In the cross-examination, the complainant has deposed that he had given loan to 2-3 persons out of which one is Raj Singh and complainant further deposed that he gives the loan at the interest of Rs.2/- per hundred and he had given ₹2 lacs to Raj Singh on the interest

@ Rs.2/- per hundred.

There is nothing in the complaint nor in the evidence that as to how much amount the accused has returned and if he has not returned, then how much amount remained to be paid. The complainant also deposed in the cross-examination that he had got written a stamp paper about ₹2 lacs from the accused which had been left with the accused. The Court below disbelieved this version. The complainant also deposed that he had given the amount of ₹2 lacs to the accused in the chamber of Mahender Singh Rana Advocate but Mahender Singh Rana Advocate has not been examined. The complainant in cross-examination deposed that he does not know the chamber of that Advocate.

Learned Magistrate after discussing all these facts, dismissed the complaint and acquitted the accused-respondent. From the perusal of the findings, I find that these have been given after appreciating the evidence in right perspective and in no way, the findings can be held as perverse.

In view of the above discussion, I find that the impugned judgments dated 13.11.2013 passed by learned JMIC, Hisar, 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.

September 06, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**