IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-325-MA of 2015 (O&M)

Rakesh Verma

...Applicant

Versus

M/s Harsha Associates Pvt. Ltd. and others

...Respondents

(ii) CRM No.A-326-MA of 2015 (O&M)

Rakesh Verma

...Applicant

Versus

M/s Harsha Associates Pvt. Ltd. and others

...Respondents

(iii) CRM No.A-327-MA of 2015 (O&M)

Rakesh Verma

...Applicant

Versus

M/s Harsha Associates Pvt. Ltd. and others

...Respondents

(iv) CRM No.A-328-MA of 2015 (O&M)

Rakesh Verma

...Applicant

Versus

M/s Harsha Associates Pvt. Ltd. and others

...Respondents

(v) CRM No.A-329-MA of 2015 (O&M)

Rakesh Verma

...Applicant

Versus

M/s Harsha Associates Pvt. Ltd. and others

...Respondents

Date of decision: January 18, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Akshay Bhan, Senior Advocate with

Mr.Gurinder S. Sandhu, Advocate
for the applicant.

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INDERJIT SINGH, J.

All the above-mentioned five cases are taken up together as same points are involved in all the cases.

Applicant-Rakesh Verma has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against M/s Harsha Associates Pvt. Ltd. and other respondents, challenging the judgment dated 25.11.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby the accused-respondents were acquitted of the charges.

The facts are taken from CRM No.A-325-MA of 2015.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that the judgment of acquittal suffers from material illegality and perversity and is liable to be set aside. It is, therefore, prayed that leave to file appeal be granted to the applicant.

As per the record, the complainant Rakesh Verma filed a complaint against M/s Harsha Associates Pvt. Ltd. and other accused under Sections 138 and 141 of the Negotiable Instruments Act. As per complainant's version, a huge amount was outstanding against accused-company through its directors accused No.2 to 4 and a dispute started between the parties which resulted in lodging of an FIR No.121 dated 11.08.2010 and during the pendency of the bail proceedings, accused No.1 through accused No.2 entered into a compromise with the complainant and his associates. Said compromise was reduced into writing between the parties on 25.11.2011 and accused persons undertook to pay a sum of ₹7.35 crores to complainant and his associates and as per compromise, various post dated cheques were given. It is the case of the complainant that when the cheques were presented by him to his banker for encashment, the same were dishonoured with the remarks 'stop payment'. Thereafter, legal notices were served and when the amount was not paid, then the complaints were filed.

Learned JMIC, Yamuna Nagar at Jagadhri, vide impugned judgments dated 25.11.2014, after appreciating the evidence, acquitted the accused-respondents.

After hearing learned counsel for the parties and after going through the record, I find that at the time of arguments, 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. The perusal of the findings given by learned Magistrate show that these are as per evidence and law and have been given after appreciating the evidence in right perspective.

In the cross-examination, the complainant stated to the effect that cheque in question was given to him in pursuance of compromise dated 25.11.2011, which was executed between the parties. He also proved on record collaboration agreement Ex.D1 and he further stated that a joint venture was started between the complainant and accused, which was started on profit and loss basis whereby the complainant party was to bear 35% losses as well as entitled to 35% profits. Initial investment of the complainant in the joint venture was ₹3.26 crores and compromise which was arrived at was for an amount of ₹7.35 crores. He further stated that he has no knowledge about the profit and loss status in the business as no accounts were ever rendered to complainant party by accused party. He refused the suggestion that complainant party itself caused a breach of compromise existing between the parties by not disclosing the source of funds and by not giving the income tax confirmation to the income tax authorities on or before 15.01.2012. He also refused the suggestion that since the complainant party had itself caused the breach of contract, payment of cheques were being stopped by the accused party.

The accused in the statement stated that existing of legally enforceable debt and liability which happens to be an important ingredient of the offence in question is not being fulfilled in the present case. DW-1 also deposed regarding the defence version that complainant party had made initial investment of ₹3.26 crores with the accused in the joint business ventures and accused had issued cheques in question in pursuance of the compromise arrived at between the parties during the bail proceedings.

Learned Magistrate, after relying upon the law, held that it is admitted version of both the parties that they jointly pooled in money for a joint business venture whereby Harsha K3C Mall was to be run by parties in Karnal. It is not in dispute that Fun Cinema was started in the said mall but the said Cinema could not run smoothly because of certain objections raised by Fun Cinema. It is also not in dispute that the complainant party invested ₹3.26 crores in said joint business venture and in the said business the complainant party was entitled to get 35% profits and also liable to incur 35% losses.

The Court also held that it is the version of the complainant party that no accounts were rendered by the accused party to them and cheques were issued only because of compromise dated 25.11.2011, which took place during the pendency of the criminal proceedings. The Court held that the base of existing liability for present case is not on the basis of rendition of accounts but is on the basis of compromise dated 25.11.2011. It is further held by the Magistrate that out of ₹7.35 crores, ₹2.75 crores have been paid by the accused to the complainant. It was also held that after receiving ₹3.25 crores, the complainant party was to help the accused party in getting the FIR quashed. It is also admitted that FIR has not been quashed so far.

Keeping in view these facts and circumstances, the Court below held that the existing liability is not proved.

The Hon'ble Supreme Court in ***Lalit Kumar Sharma and another vs. State of U.P. and another, 2008(5) SCC 638***, has held that if second cheque was issued in terms of the compromise, it did not create a new liability. As the compromise did not fructify, the same cannot be said to have been issued towards payment of debt. The above discussed law fully applies to the facts of the present case and in view of the law laid down by the Hon'ble Supreme Court, pre-existing liability has not been proved.

In view of the above discussion, I find that the findings given by learned Court below in the impugned judgments dated 25.11.2014 are correct, as per evidence and law. Learned Magistrate has appreciated the evidence in right perspective. In no way, the findings given by Court below can be held as perverse or against the law. The judgments dated 25.11.2014 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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 five applications stands dismissed.

January 18, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**