

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

(i) CRM No.A-566-MA of 2015 (O&M)

Sandhya Gupta

...Applicant

Versus

Nirmal Sharma

...Respondent

(ii) CRM No.A-617-MA of 2015 (O&M)

Sandhya Gupta

...Applicant

Versus

Vikas Sharma

...Respondent

Date of decision: November 11, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikas Kumar, Advocate
for the applicant.

Mr.Yash Dev Kaushik, Advocate
for the respondents.

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 respondents Nirmal Sharma and Vikas Sharma s/o Nirmal Sharma, challenging the judgments dated 12.12.2014 passed in complaints case No.40 of 2014 and 36 of 2014 by learned Judicial Magistrate Ist Class, Faridabad, whereby the accused-

respondents were 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 acquittal of the accused has been recorded on conjectures and surmises. The impugned judgments have resulted in the miscarriage of justice. It is, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant Sandhya Gupta filed complaints against accused Nirmal Sharma and Vikas Sharma under Section 138 of the Negotiable Instruments Act. As per complainant's version, there were friendly relations between her and accused. Both the accused had taken friendly loan of ₹2 lacs each from her and after admitting their liability, accused Nirmal Sharma issued cheque No.150232 dated 25.09.2013 for ₹2 lacs and accused Vikas Sharma issued cheque No.020199 dated 25.09.2013 for ₹2 lacs, in favour of the complainant. On the presentation of the cheques for encashment, the cheque issued by Nirmal Sharma was returned back unpaid with the remarks 'Funds Insufficient' and cheque issued by Vikas Sharma was returned back unpaid with the remarks 'Account Closed'. Legal notices were issued. When the amount was not paid, then the complaints were filed well within time.

The defence of both the accused was that they never issued cheques in question to the complainant. The same were given to one Mrs.Shakti Bhandari as a security for some chit fund transaction instead of the complainant.

Learned JMIC, Faridabad, after appreciating the evidence,

acquitted the accused-respondents vide impugned judgments dated

12.12.2014.

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

The perusal of the record firstly shows that the complainant has nowhere mentioned the date, month and year as to when the loan was given to the accused. No particulars of any type have been given in the complaint i.e. at which place and in whose presence, whether in cash or by way of cheque, the amount has been paid to the accused. There is no document on the record to show the loan transactions. No income tax return or any statement has been produced on the record to show that the amount was withdrawn from the bank or to prove the capacity of the applicant. The defence of the accused was that they never issued the cheque in favour of the complainant and the same were given to Mrs.Shakti Bhandari as security for some chit fund transaction. The complainant admitted in the cross-examination that she is known to Mrs.Shakti Bhandari.

In the absence of any document of any type to show the loan transaction, even, no date, month and year has been mentioned in the chief examination and in the legal notices also, the dates on which the loans were disbursed, were also not mentioned. There is no disclosure of the fact as to when the complainant raised demand to return the loan amount from the accused and also, when the cheques were handed over to her by the accused.

During cross-examination, the complainant has stated that the loan was allegedly given in April-May 2013. It is in the evidence that complainant is running a business of Ayurvedic Medicines and learned Magistrate held that it cannot be imagined that she would not be

maintaining any account of the financial transactions done by her. The

complainant in her cross-examination has also stated that she had lent money to some other persons also and their details are mentioned in one of her diary but no such diary has been produced to support and corroborate the complainant's version.

In view of the defence raised by the accused and cross-examination of the complainant, it is clear that defence raised by the accused is probable and the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused from the evidence of the complainant itself.

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.

In view of the above discussion, I find that the impugned judgments dated 12.12.2014 passed by learned JMIC, Faridabad, 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 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No