

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

(i) CRM No.A-628-MA of 2014 (O&M)

M/s Hem Coal Depot, Phagwara Road, Hoshiarpur
...Applicant

Versus

Sant Baba Hazara Singh Gram Udhyog Samiti and others
...Respondents

(ii) CRM No.A-648-MA of 2014 (O&M)

M/s Hem Coal Depot, Phagwara Road, Hoshiarpur
...Applicant

Versus

Sant Baba Hazara Singh Gram Udhyog Samiti and others
...Respondents

(iii) CRM No.A-649-MA of 2014 (O&M)

M/s Hem Coal Depot, Phagwara Road, Hoshiarpur
...Applicant

Versus

Sant Baba Hazara Singh Gram Udhyog Samiti and others
...Respondents

Date of decision: May 26 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjiv Pandit, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.12521 of 2014

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 27 days in filing the application seeking leave to appeal, is condoned.

CRMs No.13097 and 13098 of 2014

Heard.

For the reasons mentioned in the applications, the same are allowed. Delay of 40 days in filing the applications seeking leave to appeal, is condoned.

CRM Nos.A-628-MA, A-648-MA and A-649-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.

Applicant-M/s Hem Coal Depot has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Sant Baba Hazara Singh and other respondents, challenging the judgments dated 30.11.2013 passed in complaints No.1274, 1358 and 1359 by learned Judicial Magistrate Ist Class, Hoshiarpur, 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, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant filed complaints against accused Sant Baba Hazara Singh and others under Section 138 of the Negotiable Instruments Act.

The facts are being taken from CRM No.A-628-MA of 2014.

As per complainant's version, accused Yashpal is the President,

Poonam Mahajan is Vice President, Rajiv Kumar is Secretary, Amit Kumar is Cashier and Bhuvneshwar Kumar, Anil Kumar and Hari Kishan are the members of Sant Baba Hazara Singh, Gram Udhyog Samiti of village Ghuman Khurd, Gurdaspur and said firm has authorized Yashpal its President to deal with the financial matters. It is stated that complainant had been supplying coal to the Gram Udhyog Samiti from March 2001 as per the orders placed with complainant and due to default of payment of ₹3,54,525/- on 30.04.2003, the supply of coal was stopped and on 20.05.2003, Yashpal came and gave cheques of the amount of ₹3,50,000/-. It is further stated that complainant represented four cheques bearing No.221328 dated 22.05.2004, 221327 dated 17.05.2004, 033143 dated 12.05.2004 and 033144 dated 17.05.2004 each for an amount of ₹50,000/-, which were sent to Punjab National Bank, Batala for clearance but the same were returned back with the remarks 'Stop payment by the drawer'. Thereafter, legal notice was served upon the accused and when the amount was not paid, then the complaints were filed well within time.

Learned JMIC, Hoshiarpur, vide impugned judgments dated 30.11.2013, after appreciating the evidence, acquitted the accused-respondents.

I have heard learned counsel for the applicant and have gone through the records including the record of lower Court.

I find that findings given by learned Court below in the impugned judgments dated 30.11.2013 are correct, as per evidence and law.

Learned JMIC, Hoshiarpur, has appreciated the evidence in right perspective.

In no way, the findings can be held as perverse i.e. against the evidence and 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 version of the accused that no amount was due by accused persons towards the complainant in 2011 as in Ex.DH, ₹11,376/- is shown as advance in the name of accused persons towards the complainant. The cheque dates showing year 2001 have been altered to 2004. I myself has seen the cheques in original in lower Court record. In all the cheques in these cases, the date, month and year have been written in one ink and last digit '1' of 2001 has been altered as '4' with different ink, which is clear from the naked eye. Even, learned counsel for the applicant, after seeing the cheques, admitted during the arguments that it looks alteration but he argued that these cheques have been given as it is by the accused. If it is clear that with a different ink the digit '1' has been changed to '4', which looks to be changed/alterd after issuance of cheques, then why the complainant has received the cheques and why he has not pressed for signatures of the accused on this over-writing. The mere fact that in the memo, this fact regarding over-writing has not been mentioned, is not sufficient to held that there is no cutting/over-writing on the figure of year. When it is clear that cheques were bearing the year 2001 which has been altered to 2004, therefore, in these circumstances, the complainant is not entitled to any relief and the accused have not committed any offence. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

In view of the above discussion, I find that the findings have been given by learned JMIC, Hoshiarpur, while appreciating the evidence in right perspective. The impugned judgments dated 30.11.2013 passed by learned JMIC, Hoshiarpur, 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 for grant of leave to appeal and therefore, the present applications stand dismissed.

May 26, 2016
Vgulati

(INDERJIT SINGH)
JUDGE