

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

(i) CRM No.A-727-MA of 2013 (O&M)

M/s Santa Singh Kulwant Singh and another
...Applicants

Versus

M/s Ravindra Traders Commission Agent and another
...Respondents

(ii) CRM No.A-756-MA of 2013 (O&M)

M/s Santa Singh Kulwant Singh and another
...Applicants

Versus

M/s Ravindra Traders Commission Agent and another
...Respondents

Date of decision: April 26, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Wadhawan, Advocate
for the applicants.

Mr.Amandeep Chhabra, Advocate for
Mr.M.S.Bajwa, Advocate
for the respondents.

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together for
decision being arisen from same transaction.

Applicants-M/s Santa Singh Kulwant Singh and Kulwant Singh
(sole proprietor) have filed these applications under Section 378(4) Cr.P.C.
seeking permission for leave to appeal against respondents M/s Ravindra
Traders Commission Agent and Barkat Singh, challenging the judgments

dated 10.05.2013 passed in criminal complaints No.97 and 116 by learned Judicial Magistrate Ist Class, Patti, 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 the judgments of the trial Court are wholly unsustainable in the eyes of law and have resulted in grave miscarriage of justice. It is, therefore, prayed that leave to file appeal be granted to the applicants.

As per the record, the complainant M/s Santa Singh Kulwant Singh and Kulwant Singh filed complaints against accused M/s Ravindra Traders Commission Agent and Barkat Singh under Sections 138, 141 and 142 of the Negotiable Instruments Act. As per complainants' version, complainant is carrying on business of sale of gold ornaments. M/s Ravindra Traders Commission Agent is a sole proprietorship concern, carrying on its business of commission agent and Barkat Singh is its sole proprietor. Accused Barkat Singh purchased gold ornaments on 04.10.2002, 22.10.2002, 13.10.2002, 05.11.2012, 28.11.2002 and 08.08.2003 for total sum of ₹5,01,939/- from the complainant firm. Accused No.1 and 2 agreed to pay interest @ 18% p.a. upto 30.06.2009 i.e. ₹6,69,906/- and as such, total amount due from accused No.1 and 2 came to ₹11,71,845/-. In order to discharge legal debt, accused issued cheques No.856731 dated 30.06.2009 amounting to ₹6 lakhs and No.856732 dated 01.07.2009 amounting to ₹5,71,845/-, which on presentation for encashment, were returned back unpaid with the remarks 'Funds insufficient/Exceed Arrangement'. Legal notices were issued. When the amount was not paid, then the complaints were filed well within time.

The defence of the accused was that no debt was due towards him. The cheques were given as surety of the committee and the same was started by the complainant. Gurjit Kaur daughter-in-law of the complainant expired and a case has been registered under Sections 302, 148 and 149 IPC against Kulwant Singh and his family members. Accused further pleaded that parents of Gurjit Kaur were known to him and he published the news regarding death of Gurjit Kaur in newspaper and due to this reason, Kulwant Singh has personal grudge with the accused. In defence, accused examined DW-1 Rajesh Roshan and accused Barkat Singh examined himself as DW-2 and placed on file the documents i.e. copy of ledger Ex.D1, statement of account of accused Ex.D2 and Ex.D3 and counter part of cheque book Ex.D4.

Learned JMIC, Patti, after appreciating the evidence, dismissed both the complaints and acquitted the accused-respondents vide impugned judgments dated 10.05.2013.

Aggrieved from the above-said judgments, present appeals along with applications for grant of leave to appeal have been filed.

Notice of motion was issued in both the cases. Learned counsel for the respondent appeared and contested both the applications.

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

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. 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.

From the record, I find that the case of the complainant looks doubtful that he gave gold ornaments from time to time to the accused without taking any money from him from October 2002 to August 2003. It looks unnatural that a person is not paying even a single rupee and the complainant is giving gold ornaments during the period of 11 months. As per the complainant, the total gold ornaments were taken by the accused for ₹5,01,939/- and it looks unnatural that accused will agree to pay interest for seven years @ 18% p.a., which comes to ₹6,69,906/-. There is no document on the record to show that from August 2003 to June 2009, ever any notice was served asking for the amount or any agreement was executed to pay the amount with interest etc. There is also nothing in the complaint that at the time of purchasing the gold ornaments in question, there was condition to pay interest or the accused agreed to pay the amount at a later stage after such a long period.

Learned Magistrate has discussed another fact that cheques of these series were encashed during 1999 and 2000. The accused has also produced the counter part of the cheque book to show that the cheques were given in the year 2000. Further, the bill produced by the complainant, does not bear the signatures of the accused. Even the sale letters also do not bear the signatures of the accused. It is also admitted by the complainant during cross-examination that cheques were not filled up by the accused and the same were filled by some other person and the accused has only signed these cheques. The counter part of the cheque book shows that these

and 01.07.2009. The defence raised by the accused is probable one, which is duly supported and corroborated by the case of the complainant itself and defence evidence of the accused.

From the perusal of the judgment 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.

In view of the above discussion, I find that the impugned judgments dated 10.05.2013 passed by learned JMIC, Patti, 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 appeal and therefore, both the applications stand dismissed.

April 26, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No