IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-1350-MA of 2016 (O&M)

Gurmeet Singh

...Applicant

Versus

Ramandeep Singh

...Respondent

(ii) CRM No.A-1531-MA of 2016 (O&M)

Gurmeet Singh

...Applicant

Versus

Ramandeep Singh

...Respondent

Date of decision: March 29, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.D.Sharma, Advocate
for the applicant.

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INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together for decision as the point for determination in both the cases is the same.

Applicant-Gurmeet Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ramandeep Singh, challenging the judgments dated 12.05.2016 passed in complaint cases No.21066 dated 15.06.2012 and 23572 dated 05.06.2013 by learned Judicial Magistrate Ist Class, Amritsar, 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 learned trial Court did not correctly appreciate the pleadings of the case and the evidence brought on record by the applicant and illegally acquitted the respondent. It is, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant Gurmeet Singh filed complaints against accused Ramandeep Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused approached the complainant and requested to advance friendly loan of ₹2,50,000/- in both the cases for business/domestic purpose. In discharge of his legal debt and liability, accused issued cheque No.961770 dated 30.04.2013 and cheque No.961771 dated 11.05.2012 for a sum of ₹2,50,000/- each, in favour of the complainant, which on presentation for encashment, were returned back unpaid with the remarks 'Account Closed' and 'Opening Balance Insufficient'. Legal notices were issued. When the amount was not paid, then the complaints were filed well within time.

The defence of the accused is that in fact blank cheques in dispute were handed over to Narinder Kumar and the same have been misused by the complainant and the cheques were not bearing signature of the accused. He further submitted that complainant was financially incapable to advance such a huge loan to the accused. He also submitted that he gave replies to the legal notices to the complainant.

Learned JMIC, Kapurthala, after appreciating the evidence, dismissed both the complaints and acquitted the accused-respondents vide impugned judgment dated 12.05.2016.

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

I have heard learned counsel for the applicant 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.

There is no mention by the complainant in both the cases that he has advanced ₹5 lakhs i.e. two times ₹2,50,000/- each to the accused. Secondly, no date, month and year has been mentioned in both the complaints as to when the amount was advanced to the accused. There are no particulars that at which place, in whose presence and by which mode the amount was given. No receipt or any security document has been taken from the accused at the time of advancing huge amount i.e. total ₹5 lakhs of these two cases. There is no document of any type on the record to show the loan transaction. As per lay laid down by the Hon'ble Supreme Court in ***Vijay Vs Laxman & Another 2013(1) R.C.R (Crim) S.C 1028***, this is a one of the most important circumstance which rebuts the presumption under Section 139 of the Negotiable Instruments Act.

Another fact which makes the version of the complainant improbable is that both the cheques are of the same series and the cheque earlier in number i.e. 961770 is stated to have been issued on 30.04.2013 w whereas the cheque No.961771 is stated to have been issued on 11.05.2012.

It is on the record that legal notice dated 23.05.2012 has been issued to the accused and accused has replied to the legal notice and has taken the defence. When the matter was already brought to the notice of the complainant by the accused that he has no legal debt and this cheque has been misused which was given to one Narinder Kumar, then why the accused will still issue another cheque after about one year of the reply on 30.04.2013. In defence, the accused has also examined DW-2 Virendra Singh Tomar, Asstt. Manager, Indian Overseas Bank and DW-3 Narinder Kumar.

Learned Magistrate after appreciating the evidence held that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted. There is also nothing on the record to show that complainant has capacity to advance such a huge amount.

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.

In view of the above discussion, I find that the impugned judgments dated 12.02.2012 passed by learned JMIC, Amritsar, 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, all the applications stand dismissed.

March 29, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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