

**CRM-A-191-MA-2016 (O & M) and
CRM-A-198-MA-2016**

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

Date of Decision: 06.04.2017

1. CRM-A-191-MA-2016 (O & M)

Kamalpreet Kaur

... Applicant

Versus

Vijay Mehta

... Respondent

AND

2. CRM-A-198-MA-2016

Manpreet Kaur

... Applicant

Versus

Vijay Mehta

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Ashok Giri, Advocate,
for the applicants in both the applications.

INDERJIT SINGH, J.

**CRM-4054-2016 in
CRM-A-191-MA-2016**

Heard.

For the reasons mentioned in the application, the same is
allowed. Delay of 310 days in filing the application seeking leave to

**CRM-A-191-MA-2016 (O & M) and
CRM-A-198-MA-2016**

appeal, is condoned.

**CRM-A-191-MA-2016 and
CRM-A-198-MA-2016**

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

Vide CRM-A-191-MA-2016, applicant-Kamalpreet Kaur has filed application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent-Vijay Mehta, challenging the impugned judgment dated 23.01.2015 passed by learned Chief Judicial Magistrate, Rupnagar in Criminal Complaint No.40 dated 27.09.2012, titled as 'Kamalpreet Kaur vs. Vijay Mehta', under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act'), vide which the respondent-accused was acquitted.

Vide CRM-A-198-MA-2016, applicant-Manpreet Kaur has filed application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent-Vijay Mehta, challenging the impugned judgment dated 19.11.2015 passed by learned Judicial Magistrate Ist Class, Ropar, in Criminal Complaint No.147 dated 01.10.2012, titled as 'Manpreet Kaur vs. Vijay Mehta', under Section 138 of the N.I.Act, vide which the respondent-accused was acquitted.

It is mainly stated in the applications that accompanying appeals are being filed which are likely to succeed on the grounds taken therein. It is further stated that the impugned judgments passed by

**CRM-A-191-MA-2016 (O & M) and
CRM-A-198-MA-2016**

learned trial courts, acquitting the respondent, are without appreciation of evidence and facts and thus the same deserve to be set aside. It is, therefore, prayed that leave to appeal may be granted.

The facts are being taken from CRM-A-191-MA-2016.

As per the case of the applicant-complainant, the accused in discharge of legal liability issued a cheque bearing No.798378 dated 10.01.2012 of Rs.5,00,000/- in favour of the complainant, which on presentation for encashment, was returned back on account of “Insufficient Funds”. Thereafter, legal notice was issued to the accused and when the amount was not paid, the complaint was filed well within time.

Learned trial courts, after appreciating the evidence, acquitted the respondent-accused vide impugned judgments dated 23.01.2015 and 19.11.2015.

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

After hearing learned counsel for the applicants and after going through the record, especially the judgments passed by the trial Courts, I find that the findings given by learned trial Courts in both the cases are correct, as per evidence and law. These findings have been given after appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out by learned counsel for applicants as to which material evidence has been misread and which material evidence has not been

**CRM-A-191-MA-2016 (O & M) and
CRM-A-198-MA-2016**

considered by the trial courts.

Perusal of the record of CRM-A-191-MA-2016 shows that the accused has taken the defence that the complainant alongwith her sister sold 2/3rd share in plot No.C-80, situated in Fateh Nagar New Delhi to his wife vide registered sale deed dated 09.11.2011. He further pleaded that they were legally bound to hand over the previous ownership documents to them, but they did not possess the same at the time of execution of sale deed, consequently they entered into a written agreement dated 09.11.2011 itself in presence of the witnesses whereby it was mutually agreed that a sum of Rs.10 lakhs would be withheld by the purchaser till original documents are supplied to the purchaser or her husband by them. He further pleaded that he had issued two cheques bearing No.798379 and 798378 dated 12.01.2012 and 10.01.2012 for the sum of Rs.5 lakhs each on the condition and as security that said cheques would be got encashed by the complainant and her sister after handing over the original documents.

CW 1 complainant while appearing into the witness-box admitted in her cross-examination that she has executed sale deed of the plot of her share in November, 2011. She also admitted that the accused had paid price of her share in installments. However, she stated that all the payments were not made by the accused through cheque of consideration of sale deed. She was also duly confronted with agreement Ex.D-1 dated 09.11.2011 and she admitted the same bearing her signature at point A. She also admitted that it was executed by her

**CRM-A-191-MA-2016 (O & M) and
CRM-A-198-MA-2016**

alongwith her sister in favour of the accused. She also admitted on the lines of plea of defence raised by accused that she has not handed over original title document to accused regarding property mentioned in the said agreement. She also admitted that Sukhdarshan has witnessed the said agreement bearing his signatures at Point 'B'. She also stated that she has not mentioned the said factum regarding agreement Ex.D-1 either in her complaint or her affidavit Ex.CW 1/A. She also admitted that she is not in possession of original documents regarding the plot, so she cannot hand over the same to the accused.

In CRM-A-198-MA-2016, the complainant admitted the agreement Ex.D-1 during her cross-examination and mainly deposed the same facts.

From the evidence on record, learned trial courts found that the cheques in dispute were given as security as per the Ex.D-1 and these cheques were only to be presented for encashment after handing over the original title documents. It is admitted fact that the original documents were not handed over to the accused. It is also clear from the evidence on record that version of the complainant that the accused has issued the cheque in discharge of his legal liability, is also false. The sale deed has already been executed and another agreement Ex.D-1 has been executed vide which the cheques have been given only for the purpose of security and these cheques are to be presented for encashment on handing over the original documents.

**CRM-A-191-MA-2016 (O & M) and
CRM-A-198-MA-2016**

From the above discussion, I find that the accused has raised probable defence which is duly supported and corroborated by the evidence of the complainant as well as defence evidence. Therefore, I find that the findings given by the trial Courts are correct, as per evidence and law and, therefore, the same do not require any interference.

Therefore, finding no merit in the present applications under Section 378 (4) Cr.P.C., the same are dismissed.

06.04.2017
parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No