

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

(i) CRM No.A-131-MA of 2014 (O&M)

M/s Sardari Lal Soni and brothers

...Applicant

Versus

Sachin Aggarwal

...Respondent

(ii) CRM No.A-132-MA of 2014 (O&M)

M/s Sardari Lal Soni and brothers

...Applicant

Versus

Sachin Aggarwal

...Respondent

Date of decision: March 23, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Athwal, Advocate
for the applicant.

Mr.Vivek K. Thakur, Advocate
for the respondent.

INDERJIT SINGH, J.

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

Applicant-M/s Sardari Lal Soni and brothers has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sachin Aggarwal, challenging the judgment dated 10.02.2012 passed in criminal complaints No.2034 and 2035 dated

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 impugned judgment and proceedings suffer from many illegalities as well as material irregularities. If the leave to file appeals is not granted, then the applicant will suffer irreparable loss, which cannot be compensated later on, in any manner. It is, therefore, prayed that leave to file appeals be granted to the applicants.

As per the record, the complainant M/s Sardari Lal Soni and Bros. through its proprietor Sh.R.K.Soni filed complaints against accused Sachin Aggarwal under Section 138 of the Negotiable Instruments Act. As per complainants' version, complainant is a firm dealing in brick kiln business. The accused purchased bricks from complainant and to pay the price of the same and in order to discharge the legal liability, the accused has issued two cheques bearing No.004416 dated 17.04.2009 for a sum of ₹50,000/- and No.004417 dated 21.07.2009 for a sum of ₹85,000/-, which on presentation for encashment, were 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.

Learned Special JMIC, Kapurthala, after appreciating the evidence, dismissed both the complaints and acquitted the accused-respondents vide impugned judgment dated 10.02.2012.

Aggrieved from the above-said judgment, 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

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 in the complaint, there is no mention of particulars regarding supplying of bricks etc. and to show the liability existing against the accused. It is simply written that accused purchased the bricks and in order to discharge the liability, the accused issued two cheques. The perusal of the record further shows that statement of account has been produced by the complainant but no bricks have been supplied in the month of April 2009 or before that and there is no explanation that for what purpose, the cheque dated 17.04.2009 has been issued by the accused. As per evidence on record, there was no liability on that day qua payment of any amount to the complainant by the accused. As per the account statement, first time the bricks were supplied in the month of June 2009.

The Court below also discussed the statement of account and found that statement is not reliable. No account books have been produced. It is now settled that presumption under Section 139 of the Negotiable Instruments Act can be rebutted even from the case of the complainant. The

complainant stated that he is the sole proprietor of the complainant-firm and

is fully conversant with the facts of the case but during cross-examination he has not stood on his legs where he has admitted that the firm is not a registered firm. On the one hand, he has admitted that the firm is a partnership firm where his daughter-in-law is one of the partners but in the same breath, he has resiled from his statement. He admitted that the accused issued the cheques for supply of bricks to him but he has again admitted that he cannot tell the dates of purchase of bricks by the accused. The complainant promised to produce the complete account for supply of bricks but he has again not stuck to his previous stand and further stated in the cross-examination that he has not brought any copies of receipts of supply of bricks where the signatures of the accused may be there. The complainant further stated that his accountant maintains the complete record. Account books are not maintained by him but all the records of supply of bricks are maintained in the computer only. He further admitted that he cannot produce any record corresponding to the account books because he does not have such type of procedure followed for his firm. He also stated that he cannot produce any bill containing the signatures of the accused for having received the bricks.

CW-4 Milap Rai Verma, stated that bricks were supplied to the accused but he cannot produce any receipt of supply the brick which may contain the signatures of the accused. The document Ex.C8 for ₹85,000/- and ₹50,000/- does not contain the signatures of the accused and all other documents Mark 1 to 10, which are copies of challan book/bill book having customer's sign printed upon each mark, also do not have signatures of the accused.

there is not even a single document to show the signatures of the accused and all these documents do not speak itself that the bricks supplied by the complainant to the accused were ever received by him. No ledger books and account books etc. have been produced. It is further held that the statement of supply of bricks appears to have been prepared to dodge the proceedings of the Court because it relates to the accused only. Had it been the complete record of the firm, it might have mention of other parties also.

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 12.02.2012 passed by learned Special JMIC, Kapurthala, 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 23, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No