

247 (5 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1967-MA-2015 (O&M)

Date of Decision: 31.08.2017

PUNJAB AGRO INDUSTRIES CORPORATIONPetitioner
V/S

STATE OF PUNJAB AND OTHERSRespondents

CRM-A-1998-MA-2015 (O&M)

PUNJAB AGRO INDUSTRIES CORPORATIONPetitioner
V/S

STATE OF PUNJAB AND OTHERSRespondents

CRM-A-1999-MA-2015 (O&M)

PUNJAB AGRO INDUSTRIES CORPORATIONPetitioner
V/S

STATE OF PUNJAB AND OTHERSRespondents

CRM-A-2007-MA-2015 (O&M)

PUNJAB AGRO INDUSTRIES CORPORATIONPetitioner
V/S

STATE OF PUNJAB AND OTHERSRespondents

CRM-A-2008-MA-2015 (O&M)

PUNJAB AGRO INDUSTRIES CORPORATIONPetitioner
V/S

STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. B.R. Bansal, Advocate,
for the applicant(s).

Mr. Ramandeep Sandhu, Senior DAG, Punjab.

Mr. J. S. Bedi, Senior Advocate
with Mr. L.S. Chahal, Advocate,
for respondent No.2.

Mr. Karan Nehra, Advocate,
for Mr. Vivek Thakur, Advocate,
for respondent No.3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest?

KULDIP SINGH, J. (Oral)

This order of mine shall dispose of all the above mentioned
connected applications bearing Nos. CRM-A-1967-MA-2015, CRM-A-1998-
MA-2015, CRM-A-1999-MA-2015, CRM-A-2007-MA-2015 and CRM-A-2008-

MA-2015 filed under Section 378 (4) & (5) Cr. P.C. for grant of leave to appeal against the Judgment dated 16.05.2015 passed by the learned Additional Sessions Judge, Kapurthala whereby in an appeal against the conviction under Section 138 of the Negotiable Instruments Act, 1881, the learned Additional Sessions Judge, Kapurthala while upholding the conviction and sentence of partner Sudesh Kumar, acquitted partner Kamini Devi of the notice of accusation served upon her on the ground that she was a sleeping partner and there is nothing on record to show that she is actively participating in the business of the firm.

I have heard the learned counsel for the parties and have carefully gone through the case file.

Learned counsel for the applicant(s) has argued that Kamini Devi was an active partner of the firm, though the impugned cheques were signed only by Sudesh Kumar, partner. He has further argued that Power of Attorney dated 23.10.2001 (Ex. C1) was executed by Kamini Devi and Pran Nath (since deceased) in favour of Sudesh Kumar and that an agreement dated 12.11.2001 (Ex. C2) was executed by Sudesh Kumar being an attorney of Kamini Devi. Further, there is another agreement dated 05.02.2001 (Ex. C3) which was executed by Sudesh Kumar and also signed by the Kamini Devi for supply of paddy.

I am of the view that the parameters for interfering in judgement of acquittal are very strict. The applicant is required to prove that the lower Court has committed illegality or there is misreading of evidence. If out of the two views, the lower Court takes one of the possible views then this Court cannot interfere in the appeal against the acquittal.

Now coming to the findings recorded by the learned Additional Sessions Judge, Kapurthala, in order to see what weighed in the mind of the learned judicial officer, relevant findings of the appellate Court are required to be reproduced, which are as under: -

“32. *Having considered the arguments of both the sides in the light of record available on file, I have found that there is no denial from the fact that the complainant firm had obtained 22 cheques from accused Sudesh Kumar under his signatures and Kamini Devi is not a signatory of any of the cheques on 17.10.2002. There is no denial from the fact that complainant filed 17 complaints only against the Kapurthala Rice Mills and Sudesh Kumar being partner of the firm by alleging that accused Sudesh Kumar is Incharge and responsible for the day to day working of the accused firm. Yashpal Gupta, District Manager while stepping into the witness box as PW3 also deposed so but in subsequent 05 complaints brought on 12.08.2003 by complainant, complainant also impleaded Pran Nath (since deceased) and Kamini Devi alongwith Sudesh Kumar being partners as accused by alleging that all the accused are Incharge and responsible for the day to day working of the said firm.*

33. *It is evident from the version of complainant that it was accused Sudesh Kumar who was Incharge and responsible for the day to day working of the accused firm. It was neither pleaded nor proved on record that what was the role played by accused Pran Nath (since deceased) or Kamini Devi in conduct of the business of the firm. It is a matter of common parlance that several partners are made in the firm who are better known are sleeping partners who are not required to take part in the business of the firm. In the instant case, accused Kamini Devi is the*

wife of the brother of accused Sudesh Kumar who seems to have been inducted as partner of the firm to admit him for profit of the firm. There is nothing on record to suggest that accused Kamini Devi ever participated in the business of the firm actively. There is nothing on record to suggest that what part was played by accused Kamini Devi towards the conduct of the business of the firm. So merely from the bald assertion of complainant, it cannot be taken that accused Kamini Devi was Incharge or responsible for the business of the accused firm. Even vide alleged power of attorney dated 23.10.2001 proved on record as Ex. C1, accused Sudesh Kumar was authorized by the firm to deal with Punjab Agro Industries Corporation Limited, Kapurthala for milling of paddy etc. Accused Sudesh Kumar was never authorized to sign the impugned cheques on behalf of the firm. It is Sudesh Kumar, who used to conduct the business of the firm, issued impugned cheques when a deficit of paddy was detected. Accused Kamini Devi who happens to be an old lady is not a signatory to the cheque. There is nothing on record to suggest that the impugned cheques were issued to the knowledge of accused Kamini Devi. So in absence of the proof that how and in what manner accused Kamini Devi was responsible for the conduct of the business of the company. Accused Kamini Devi cannot be held to be perpetrator of the alleged crime. Moreover, partnership deed of the accused firm has not been proved on record by complainant to infer that Kamini Devi was a partner or active partner in the accused firm.....”

In addition to this, learned Additional Sessions Judge, Kapurthala has also observed that the partnership deed has not been proved on record that Kamini Devi was a partner or active partner in the accused firm. However,

learned counsel for the applicant has argued that the partnership deed was on record.

I am of the view that it is a matter of record that the complainant had obtained 22 cheques from Sudesh Kumar which were signed by Sudesh Kumar. Kamini Devi was not the signatory of the said cheques. As many as 17 complaints were filed against Kapurthala Rice Mills and Sudesh Kumar being the partner but Kamini Devi was not arrayed as accused. Subsequently, 5 more complaints were filed in which Kamini Devi was added as co-accused. In the 17 complaints, it was stated that Sudesh Kumar is Incharge and responsible for running of the day to day affairs of the firm.

It being so, the complainant cannot wriggle out of his own admission made in the said 17 complaints. Learned Additional Sessions Judge, Kapurthala has also observed that Kamini Devi is an old lady and was a sleeping partner.

It being so, there is no ground to differ with the view taken by the learned Additional Sessions Judge, Kapurthala. As such all the five applications for grant of leave to appeal are hereby dismissed.

August 31, 2017
Suresh Kumar

[KULDIP SINGH]
JUDGE

		✓	
Whether speaking / reasoned	:	Yes	/ No
			✓
Whether Reportable	:	Yes	/ No