

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

(i) CRM No.A-2020-MA of 2015 (O&M)

Pardeep Singh

...Applicant

Versus

Hari Kishan @ Bobby

...Respondent

(ii) CRM No.A-2047-MA of 2015 (O&M)

Pardeep Singh

...Applicant

Versus

Hari Kishan @ Bobby

...Respondent

Date of decision: July 26, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jatin Hans, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.41003 of 2015 in CRM No.A-2020-MA of 2015

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 9 days in filing the application seeking leave to appeal, is condoned.

CRM No.41634 of 2015 in CRM No.A-2047-MA of 2015

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 15 days in filing the application seeking leave to appeal, is condoned.

Main cases

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

Applicant-Pardeep Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Hari Kishan @ Bobby, challenging the judgments dated 22.09.2015 passed in criminal complaints No.5-2 and 6-2 dated 25.10.2011 by learned Judicial Magistrate Ist Class, Bhiwani, 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, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant Pardeep Singh filed complaints against accused Hari Kishan @ Bobby under Section 138 of the Negotiable Instruments Act. As per complainants' version, he was having friendly relations with accused and accused borrowed a sum of ₹1,50,000/- (in both complaints) for his personal requirements. In view to clear his legally enforceable debt towards the complainant, the accused issued two cheques i.e. cheque No.510949 dated 28.08.2011 (in complaint No.5-2) and cheque no.510948 dated 02.09.2011 (in complaint No.6-2), both amounting

encashment, were returned back unpaid with the remarks “Funds Insufficient” and “Opening balance Insufficient”. Legal notices were issued. When the amount was not paid, then the complaints were filed well within time.

Learned JMIC, Bhiwani, after appreciating the evidence, dismissed both the complaints and acquitted the accused-respondent vide impugned judgments dated 22.09.2015.

Aggrieved from the above-said judgment, 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.

From the record, I find that the version given in the complaint by the complainant is totally different with the version given in the evidence. The Court has taken note of this fact. In each of these two complaints, the complainant is alleging that he has given ₹1,50,000/- to the accused, who issued cheques for the payment of this amount. The complainant nowhere alleges any other transaction of ₹4,50,000/- given to the accused or the accused executed pronote and receipt qua that amount but

while appearing in the witness box, the complainant has changed his version

that earlier he has given ₹4,50,000/- to the accused and pronote was executed and after some period, ₹1,50,000/- more was given to the accused by the complainant and in discharge of this amount, separate cheques have been issued. Even at the time of arguments, learned counsel for the applicant argued that the amount given by the complainant is ₹4,50,000/- on the basis of pronote and receipt and then ₹1,50,000/- was given afterwards but as per the averments of both these complaints, accused has taken ₹1,50,000/- two times from the complainant, which means that version given by the complainant is false.

Furthermore, no particulars have been given as to when the amount has been given to the accused. No date, month and year has been mentioned. No particulars of any type have been given. No security document qua these amounts in question have been taken from the accused nor there is any document of any type to show these loan transactions.

In view of the case of the complainant itself, the presumption under Section 139 of the Negotiable Instruments Act has been rebutted. Learned Magistrate also held that the financial capacity has also not been proved by the complainant. The Court below discarded the doubtful version of the complainant and acquitted the accused-respondent.

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 22.09.2015 passed by learned JMIC, Bhiwani, 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.

July 26, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No