IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-346-MA of 2015 (O&M)

Bina Yadav wife of B.S.Yadav

...Applicant

Versus

The State of Haryana and another

...Respondents

(ii) CRM No.A-383-MA of 2015 (O&M)

Rajiv Kumar son of Sh.N.S.Gandass

...Applicant

Versus

The State of Haryana and another

...Respondents

(iii) CRM No.A-384-MA of 2015 (O&M)

Sandeep Yadav son of Sh.B.S.Yadav

...Applicant

Versus

The State of Haryana and another

...Respondents

Date of decision: March 20, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjeev Kumar Bawa, Advocate
for the applicants.

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INDERJIT SINGH, J.

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

Applicants have filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Brij Bhan Singh, challenging the judgments dated 12.12.2014 passed in criminal complaints No.1 AG, 2 AG and 4 AG of 2014 by learned Judicial Magistrate Ist Class, Gurgaon, whereby the accused-respondent Brij Mohan Singh 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 judgments of acquittal of the accused has caused grave miscarriage of justice to the applicants. It is, therefore, prayed that leave to file appeal be granted to the applicants.

As per the record, the complainants Bina Yadav, Sandeep Yadav and Rajiv Kumar Gandass filed complaints against accused Brij Bhan Singh under Section 138/142 of the Negotiable Instruments Act. As per complainants' version, accused borrowed a personal loan from them for his personal requirements and has issued the cheques in question. Accused is well known to the complainant Sandeep Yadav and has friendly relations with him. In January 2013, accused borrowed ₹3 lakhs from Sandeev Yadav and ₹1 lakh each from complainant Bina Yadav and Rajiv Kumar Gandass, as friendly loan for his urgent personal/business needs. The said loan was given in cash and accused was to repay the said loan in six months. In the month of October, accused in order to discharge the said legal liability, handed over cheques in question, which on presentation for encashment, were returned back unpaid with the remarks 'Payment Stopped by Drawer'. Legal notices were issued. When the amount was not paid, then the complaints were filed well within time.

On the other hand, accused denied his liability to pay anything to the complainants and also denied the evidence produced by the complainants. In defence, accused examined DW-1 Anil Sharma.

Learned JMIC, Gurgaon, after appreciating the evidence, acquitted the accused-respondents vide impugned judgments dated 12.12.2014.

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.

The perusal of the record shows that no date has been mentioned as to when the loan was given to the accused. There is no document on record to show these loan transactions. There is nothing in the complaints as to when the loan was demanded back by the complainants from the accused. There are no particulars of liability of any type in the complaints.

On the other hand, the accused has raised probable defence by stating that these complainants have opened accounts in the company namely M/s. Golden Sparrow Capital Services Pvt. Ltd. in which the accused was shareholder. There was a dispute of the complainants with the company and they obtained the cheques forcibly from him, though he was not liable to pay any amount to the complainants. DW-1 Anil Sharma proved the opening of accounts by the complainants in the month of May-June 2013.

Therefore, the Court below did not believe the version of friendly loan, specially when there is on document on record to prove the loan transactions. Even in the case of Bina Yadav vs. Brij Bhan Singh, Bina Yadav did not appear, rather her attorney i.e. her son appeared as a witness.

The perusal of the evidence on record shows that there is nothing on the record to show the loan transactions as alleged by the complainants. The loan transactions are not supported and corroborated by any documentary evidence of any type. No date has been mentioned in the complaints as to when the loan was given. The accused has duly proved, which is also admitted by the complainants, that the complainants have dealing and accounts with M/s Golden Sparrow Capital Services Pvt. Ltd.

From the evidence on record, I find that the accused has raised probable defence and the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

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 12.12.2014 passed by learned JMIC, Gurgaon, 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 appeal and therefore, all the applications stand dismissed.

March 20, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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