

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

(i) CRM No.A-956-MA of 2015 (O&M)

Pardeep Yadav

...Applicant

Versus

Brij Bhan and others

...Respondents

(ii) CRM No.A-957-MA of 2015 (O&M)

Pushkar

...Applicant

Versus

Brij Bhan and others

...Respondents

(iii) CRM No.A-958-MA of 2015 (O&M)

Vikas Yadav

...Applicant

Versus

Brij Bhan and others

...Respondents

Date of decision: April 18, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Surinder Dagar, Advocate
for the applicants.

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 Brij Bhan and other respondents, challenging the judgments dated 19.03.2015 passed in criminal complaints No.222, 223 and 224 of 2013 by learned Judicial Magistrate Ist Class, Gurgaon, whereby the accused-respondents were 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 are based on conjectures and surmises. It is also stated that if the leave to appeal is not granted, then the applicants will suffer irreparable loss. It is, therefore, prayed that leave to file appeal be granted to the applicants.

As per the record, the complainants Pardeep Yadav, Pushkar and Vikas Yadav filed complaints against accused Brij Bhan, Anil Sharma and M/s Golden Sparrow Capital Services (Pvt.) Ltd. under Section 138/141/142 of the Negotiable Instruments Act. As per complainants' version, accused No.1 and 2 are Directors of M/s Golden Sparrow Capital Services Pvt. Ltd. and complainants have friendly relations with the accused since long. In the month March 2013, accused took a friendly loan of ₹20 lakhs from Pardeep Yadav and in the month of July 2013, they took friendly loans of ₹35 lakhs and ₹45 lakhs from complainants Pushkar and Vikas Yadav respectively and in discharge of the liability, the accused issued cheques bearing No.254541 dated 15.09.2013 of ₹20 lakhs, No.210652 dated 24.09.2013 for ₹35 lakhs and No.363807 dated 24.09.2013 for ₹45 lakhs respectively, which on presentation for encashment, were returned back unpaid with the remarks 'Fund Insufficient'. Legal notices were issued. When the amount was not paid, then the complaints were filed well within

The accused took the defence that they have not issued any cheque to the complainant. Rather, their accountant Pushkar Sharma, who has also filed a complaint against them, had colluded with the complainant and got these cheques issued without their knowledge and any notice to them. There is no legal liability of the company to discharge any debt against the alleged cheques as no transaction has taken place with the company and the complainants at any point of time. In two complaints, accused examined DW-1 Pushkar Sharma. Accused have also tendered certified copies of complaint and statement of Pushkar Sharma. Accused also examined DW-2 Priya Kant, Ahlmad, who proved document Ex.DW2/A.

Learned JMJC, Gurgaon, after appreciating the evidence, acquitted the accused-respondents vide impugned judgments dated 19.03.2015.

I have heard learned counsel for the applicants 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 the case of the complainants in all the cases is that they have given friendly loans i.e. ₹20

₹45 lakhs in the case of Vikas Yadav. In all these cases, no date has been mentioned as to when the loan was given and only months have been mentioned i.e. in the case of Pardeev Yadav as March 2013 and in other two cases as July 2013. There are no documents on record of any type to show these loan transactions. ₹20 lakhs, ₹35 lakhs and ₹45 lakhs are huge amount and it looks unnatural that a person will give this amount without getting executed any security document. Furthermore, the cheques have been issued from the account of the company and version that complainants have friendly relations also cannot be believed. If the amounts have been advanced to the company, then their might have some record with the complainant to show advancement of loans. Even the record of the company has not been called to prove this version. Nothing has been brought on record to show the source of such a huge amounts by the complainants. These amounts have also not been shown in the income tax returns nor any record has been placed on the file.

The defence of the accused is that Pushkar Sharma, one of the complainants, was working as accountant and he obtained the cheques and handed over to various persons including himself. He has also been examined as defence witness in two cases and third case is filed by him. There is nothing to show that from where Pushkar Sharma has obtained ₹35 lakhs to advance a friendly loan, who himself was an accountant in the company. No bank account statement has been produced by any of the complainant to show withdrawal of the money. The defence version raised by the accused is supported from the case of the complainants as well as from the defence evidence.

argued that the loans have been given for domestic and for business purposes. If the loans were not given to company and were given to other accused in personal capacity, even then also, the accused are entitled to acquittal as the cheques are from the account of the company and not from the personal account of other accused. Furthermore, other accused have also not been sued in personal capacity but as Directors of the company. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence.

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 19.03.2015 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.

April 18, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No