IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-866-MA of 2012 (O&M)

Umesh Chand

...Applicant

Versus

State of Haryana and another

...Respondents

(ii) CRM No.A-924-MA of 2012 (O&M)

Umesh Chand

...Applicant

Versus

State of Haryana and another

...Respondents

Date of decision: November 20, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Neeraj Jain, Advocate for
Mr.Jagmohan S. Ghuman, Advocate
for the applicant.

Mr.Sukhdeep Parmar, DAG, Haryana
for the respondent-State.

Mr.Rakesh Gupta, Advocate
for respondent No.2.

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INDERJIT SINGH, J.

CRM No.69105 of 2012 in CRM No.A-924-MA of 2012

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 55 days in filing the application seeking leave to appeal, is condoned.

Main applications

Both the above-mentioned applications are taken up together as these have been arisen from same transaction and between the same parties.

Applicant-Umesh Chand has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Chander Bhan, challenging the impugned judgments dated 25.07.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the accused-respondent was acquitted.

It is mainly stated in the applications that accompanying appeals are being filed which are likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Umesh Chand filed complaints against accused Chander Bhan under Section 138 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-866-MA of 2012. As per complainant's version, accused is known to him and about six months ago, accused approached the complainant and requested him to give him ₹7 lakhs for a period of three months as he needed that money urgently. The complainant believed the assurance of the accused and gave him ₹7 lakhs. When the complainant demanded his money back, accused issued two cheques bearing No.063513 dated 21.01.2009 amounting to ₹5,00,000/- and 022320 dated 22.01.2009 of ₹1,12,000/-, in favour of the complainant, which on presentation for encashment, were returned back with the remarks 'Funds insufficient'. Legal notices were served. When the amount was not paid, then the complaints were filed within time.

The complainant examined CW-1 Suresh Chand, Officer, CW-2 Rajender Singh and himself appeared into witness box as CW-3. At the close of complainant evidence, accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence. He denied all the incriminating evidence against him. He further pleaded that he does know the complainant and he does not owe anything to him. His cheques were lost and he made an application in the bank on 21.02.2009 for stopping the payment. Accused further stated that he did not receive any legal notice because it was sent on wrong address. In defence, accused examined DW-1 Babu Lal, Postal Assistant and DW-2 Ishan Bhalla, Ahlmad and tendered into evidence documents Ex.D1 to D10.

Learned JMIC, Gurgaon, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 25.07.2012.

Aggrieved from the above-said judgments, present appeals along with applications for grant of leave to appeal have been filed.

Notice of the applications were issued. Learned State counsel appeared. Learned counsel for respondent No.2 also appeared and contested the applications.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties as well as learned State counsel 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. At the time of arguments, 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 perusal of the record, I find that the complainant has not mentioned any date, month, year as to when the loan was advanced to the accused. No other particulars of any type have been mentioned in the complaint. No receipt or security document was got executed while lending such a huge amount of ₹7 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction.

The defence of the accused is that the cheques in question were lost and the complainant has misused the cheques and on knowing that these cheques have been misused by the complainant, the accused made written complaint against the complainant to SHO vide Ex.D5, which is dated 03.07.2009. The accused also produced the document Ex.D6, which is complaint written to DCP Gurgaon. He further produced document Ex.D3, which is the certified copy of criminal case against the complainant. All these documents support and corroborate the defence raised by the accused.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. The fact that the complainant has not given any date, month and year on which the loan was advanced nor any particular regarding the loan transaction and there is no other document to show the loan transaction, also supports and corroborates the defence version that no loan has been taken.

Otherwise also, why the complainant will lend ₹7 lakhs without getting any security document or receipt. It is duly proved by the accused that application Ex.D1 was made to Manager, Gurgaon Gramin Bank on 21.02.2009 requesting him to stop the payment of the cheques in dispute. I have gone through the original application. Though, cheque number 063513 has been correctly mentioned but other cheque number has been written as 022323 instead of 022320. This document Ex.D1 further supports and corroborates the defence version.

Furthermore, there is cutting on the cheque of ₹5 lalkhs in the year coloum and the last digit '9' has been written after over-writing, which also shows that cheque is tampered one. As per complainant version, two cheques were issued. It also looks doubtful and unnatural that on 21.01.2009 cheque of ₹5 lakhs was issued having serial No.063513 and on 22.01.2009 i.e. on the next day, another cheque bearing No.022320 has bee issued for ₹1,12,000/-. Otherwise also, if the amount of ₹6,12,000/- was to be paid through cheque, then it could be paid through one cheque. There was no need to issue two cheques. All these facts show that defence raised by the accused is probable one which is supported and corroborated by the defence evidence as well as case of the complainant and presumption under Section 139 of the Negotiable Instruments At has been duly rebutted.

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 and accused-respondents have been rightly acquitted. 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 25.07.2012 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, both the applications stand dismissed.

November 20, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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