IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-1068-MA of 2018 (O&M)

Sh.Shiv Nand Giri

...Applicant

Versus

Mr.Avdesh Kumar

...Respondent

(ii) CRM No.A-1206-MA of 2018 (O&M)

Sh.Shiv Nand Giri

...Applicant

Versus

Mr.Avdesh Kumar

...Respondent

Date of decision: November 16, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunil Chaudhary and Mr.Pawan Kumar, Advocates for the applicant.

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INDERJIT SINGH, J.

CRM No.21273 of 2018 in CRM No.A-1068-MA of 2018

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 14 days in filing the application seeking leave to appeal, is condoned.

CRM No.21778 of 2018 in CRM No.A-1206-MA of 2018

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 30 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-Shiv Nand Giri has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Avdesh Kumar challenging the impugned judgments dated 23.02.2018 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the accused-respondents were 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 further stated that if the leave to appeal is not granted then the applicant will suffer irreparable loss. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Shiv Nand Giri filed complaints against accused Avdesh Kumar under Sections 138 and 142 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-1068-MA of 2018. As per complainant's version, he is proprietor of M/s Kartik Dyeing and having friendly relations with the accused and gave a friendly loan of ₹22,80,000/- to the accused. After admitting the liability, the accused issued account payee cheque bearing No.592052 dated 14.12.2015 for ₹16,00,000/- in favour of the complainant. In the second complaint, accused had issued cheque No.526129 dated 14.12.2015 for ₹6,76,550/-, in favour of the complainant. Both the cheques 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 himself as CW-1 and tendered into evidence documents Ex.C1 to Ex.C6. 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. The defence of the accused is that cheques in question were misplaced from his office. He has no legal liability to the complainant and he has never issued the cheques in question but the complainant has somehow got his blank signed cheques and misused the same and lodged false complaints against him.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 23.02.2018.

Aggrieved from the above-said judgments, 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. 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 ₹22.80 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. No income tax return has been produced to show lending of amount in question to the accused.

Further, from the cross-examination of the complainant, I find that he has stated that he gave ₹10 lakhs in September, ₹8 lakhs in August and ₹4,80,000/- in October to the accused in cash as he was his fast friend but neither this amount has been shown in the ITR nor this fact has been mentioned in the complaint. The complainant himself stated that he does not file income tax return as he has small business. He gave loan amount of ₹22,80,000/- to the accused, which was with him. If the complainant has small business and is not an income tax payee, then from where ₹22,80,000/- came to him and why he gave this amount to the accused even without obtaining any receipt or security document and further, without any interest. There is no evidence to disclose the source of fund advanced to the accused. Learned trial Court has rightly relied upon the law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028***.

Further, it looks unnatural that accused will issue two cheques on the same day for repayment of the loan. The cheque No.592052 is dated 14.12.2015 for ₹16 lakhs and cheque No.526129 is also dated 14.12.2015 for ₹6,76,550/-.

The accused has raised probable defence that his blank signed cheques have been misplaced from his office, which have been misused by the complainant. There is not even a single document on record to show the loan transaction or the capacity of the complainant to advance such a huge amount. The defence raised by the accused is probable one and the presumption under Section 139 of the Negotiable Instruments Act 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 23.02.2018 passed by learned JMIC, Faridabad, 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 16, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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