IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-607-MA of 2013 (O&M)

Joginder Singh

...Applicant

Versus

Ramesh Rana

...Respondent

(ii) CRM No.A-608-MA of 2013 (O&M)

Joginder Singh

...Applicant

Versus

Ramesh Rana

...Respondent

Date of decision: December 07, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pankaj Bali, Advocate
for the applicant.

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<u>INDERJIT SINGH, J.</u>

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

Applicant-Joginder Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ramesh Rana, challenging the impugned judgments dated 09.05.2013 passed by learned Judicial Magistrate Ist Class, Karnal, 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 Joginder Singh filed complaints against accused Ramesh Rana under Section 138 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-607-MA of 2013. As per complainant's version, accused is his relative and running business of sale of pesticides and fertilizers. In the first week of May 2008, accused approached the complainant and requested for a loan of ₹5 lakhs. Then complainant lent an amount of ₹5 lakhs to the accused in the last week of May 2008. The accused promised to return the same within a period of six months. After expiry of six months, the complainant approached the accused and asked for payment, upon which, accused paid an amount of ₹25,000/- in cash to the complainant and told him that he would pay the remaining amount in next 2-3 months. The complainant again approached the accused and this time, accused issued cheque No.094107 dated 29.01.2009 for a sum of ₹2,25,000/- and cheque No.094106 dated 10.02.2009 for a sum of ₹1 lakh. On 29.01.2009, the complainant presented cheque No.094107 and in second case, the complainant presented cheque No.094106 on 10.02.2009 for encashment but both the cheques were returned back with the remarks 'Account closed'. Legal notices were served. When the amount was not paid, then the complaints were filed within time.

The complainant examined CW-1 Sunder Dass, Special Assistant, who proved cheque, memo and statement of account of the complainant. CW-2 Manish Gupta, ICICI Bank, who deposed that cheques were dishonoured on the ground 'account closed'. Complainant examined himself as CW-3 and proved cheque, memo, copy of legal notice and postal receipt.

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 and pleaded his innocence and false implication. The accused tendered into defence statement of complainant recorded on 17.11.2012 in complaint case No.5472/1- dated 27.03.2009 titled as 'Joginder Singh vs. Ramesh Rana, Ex.D1.

Learned JMIC, Karnal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 09.05.2013.

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 specific date on which the loan was advanced to the accused. Only month and year has been mentioned. 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 ₹5 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. Even, there is no document to show return of ₹25,000/- by the accused to the complainant, as part payment.

The accused took the defence that he was having business relations with the brother of the complainant namely Maya Ram and complainant had procured the cheque in question from his brother, misused the same and filed a false complaint against him. The perusal of the cross-examination of the complainant shows that he has given contradictory statement. He deposed that he gave ₹5 lakhs to the accused in two installments of ₹2 lakhs and ₹3 lakhs but there is no such case of the complainant in the complaint. Again, the complainant in cross-examination firstly deposed that he arranged the amount of ₹5 lakhs form the lease money which he got in the month of May 2008 and by selling six buffaloes. Later on, he deposed that he got ₹1 lakh form his brother-in-law Prem Singh, ₹1,25,000/- by selling three buffaloes, ₹65,000/- from Rishi Parkash and ₹60,000/- by selling his plot. No witness has been produce to show the lending of this amount. There is no cogent evidence on record showing selling of buffaloes or plot etc. Otherwise also, this cross-examination of the complainant shows that his statement cannot believed. There are material contradictions. Moreover, it looks unnatural that a person will lend to a person who is not known to him nor having family relation, such a huge amount without obtaining any security document or receipt. Though, in the complaint, the complainant has stated that accused is his relative but it is admitted at the time of arguments that accused is not relative of the complainant. As already discussed, there is no document to show the transaction. Furthermore, what was the necessity for the complainant to borrow money from other persons and then to lend to the accused person and that too without any documentary proof.

Next, I find that in the cross-examination the complainant deposed that he does not know if his brother Maya Ram used to run a shop at Phoosgarh road or not. He also does not know if accused was having any business relations with his brother or not. Later on, he deposed that he and his two brothers have purchased 7 acres of land in 2007-08. All this cross-examination shows that version of the complainant regarding lending of amount, cannot be believed.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the presence case, the accused has probable defence which is supported and corroborated from the case of the complainant itself and presumption had 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-respondent has 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 09.05.2013 passed by learned JMIC, Karnal, 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.

December 07, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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