

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-1236-MA of 2016 (O&M)

.....

Date of decision:18.7.2018

Sukhdev Singh through his attorney Gursahib Singh

...Applicant

v.

Sukhpal Singh

...Respondent

....

(2) Criminal Misc. No.A-1237-MA of 2016 (O&M)

.....

Iqbal Singh

...Applicant

v.

Sukhpal Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Kumar Bokolia, Advocate for the applicants.

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Inderjit Singh, J.

This order will dispose of the above mentioned two applications under Section 378(4) Cr.P.C. seeking leave to appeals against Sukhpal Singh challenging the judgments dated 6.5.2016 passed by learned Additional Chief Judicial Magistrate, Moga, vide which the complaints filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') have been dismissed and the accused has been acquitted of the charge as framed against him.

It has been mainly submitted in the applications that the applicants are filing the accompanying criminal appeals against the judgments of acquittal which are likely to succeed as per grounds mentioned therein. It has been stated that if the present applications are not entertained then the applicants would suffer irreparable loss which could not be compensated later on. It has, therefore, been prayed that these applications seeking leave to file appeals be allowed and leave be granted to the applicants to file appeals.

I have heard learned counsel for the applicants and have gone through the record.

From the record, I find that in Criminal Misc. No.A-1236-MA of 2016, Sukhdev Singh-complainant (since deceased) filed complaint against Sukhpal Singh under Section 138 read with Section 142 of the Act. As per the complainant's version a sum of ₹3 lakhs was due against the accused. In order to discharge his legally enforceable liability, the accused issued cheque No.116098 dated 25.4.2014 in favour of the complainant which on presentation for encashment returned back with the remarks "funds insufficient". The complainant sent legal notice dated 30.5.2014 through his counsel, but despite that the accused failed to make the payment of the cheque amount, hence the complaint was filed.

So far as Criminal Misc. No.A-1237-MA of 2016 is concerned, Iqbal Singh-complainant filed a complaint against Sukhpal Singh under Section 138 read with Section 142 of the Act. As per the complainant's version a sum of ₹3,50,000/- was due against the accused. In order to

discharge his legally enforceable liability, the accused issued cheque No.116099 dated 25.4.2014 in favour of the complainant which on presentation for encashment returned back with the remarks “funds insufficient”. The complainant sent legal notice dated 30.5.2014 through his counsel, but despite that the accused failed to make the payment of the cheque amount and the complaint was filed.

Both the parties produced the evidence. The learned Additional Chief Judicial Magistrate, Moga, vide the impugned judgments dated 6.5.2016 dismissed the complaints and acquitted the accused. Aggrieved from said judgments, the present appeals along with applications seeking leave to appeals have been filed.

I have heard learned counsel for the applicants and have gone through the record.

At the time of arguments, learned counsel for the applicants argued that both these cases be remanded back as after the transfer of the first Magistrate, de-novo trials have not been conducted as laid down in the judgment of Hon'ble Supreme Court in Nitinbhai Saevatilal Shah and another v. Manubhai Manjibhai Panchal and another, 2011 (4) R.C.R. (Criminal) 148. I have gone through this judgment relied upon by learned counsel for the applicants, which relates to the case when it is tried summarily. If the Magistrate is transferred and a new Magistrate comes in his place then de-novo trial is to be conducted. But in the present cases, the learned Magistrate had not tried the complaints summarily. Rather, summons case procedure had been adopted. Further more, the present

applicants have not applied before the Court to try these cases as summarily instead of trying as summons cases. As these cases have not been tried summarily, therefore, there is no question of de-novo trials in the present cases. In the summons case, with the change of the Magistrate trial is not to be conducted de-novo.

Learned counsel for the applicants has not shown any law that the procedure of summons case cannot be adopted or it vitiates the trial. Further more, the perusal of the judgments shows that no date, month, year has been mentioned when the liability arose. There are no particulars as to whether the amount was given as a loan, at which place and in whose presence. There is also nothing on the record to show the mode of payment whether it was in cash or by cheque etc. Further more, though huge amount was given to the accused, but no security documents or receipts were executed. There is also nothing on record to show these transactions. As per the allegations the accused had good relations with the complainants. The accused used to borrow money from Sukhdev Singh and used to return the same. There was no legal liability towards the accused. The cheque Ex.C.1 was taken by the complainant as security which was blank but thereafter with mala fide intention the complainant filled up the same. During the evidence Gursahib Singh grandson/attorney of Sukhdev Singh (since deceased) was permitted to appear on behalf of the complainant, who has admitted that the accused was having good relations with his grand-father complainant-Sukhdev Singh. He also admitted that his deceased grand-father had remained confined in jail. The accused used to take money

from his grand-father and return the same. Further the learned Additional Chief Judicial Magistrate found that the relations of the complainants and accused were not cordial. Rather, there was already money dispute running into crores between both the parties. It is hard to believe that even after strained relations with the accused, the complainants advanced money to the accused reposing faith upon him and the accused issued the disputed cheques in favour of the applicants.

The findings given by the learned Additional Chief Judicial Magistrate, Moga, are correct as per evidence and law. The findings cannot be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below.

From the record, I find that the findings have been given after correctly appreciating the evidence. In view of the above discussion, I do not find any ground to grant leave to file appeals. Therefore, finding no merit in the criminal miscellaneous applications filed under Section 378(4) Cr.P.C. seeking leave to appeal, the same are dismissed.

July 18, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No