

**CRM-A-1030-MA-2015 and
CRM-A-1090-MA-2015**

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

Date of Decision:09.10.2018

1. CRM-A-1030-MA-2015

Bhagat Singh

... Applicant

Versus

Kumar Pal Sharma

... Respondent

AND

2. CRM-A-1090-MA-2015

Bhagat Singh

... Applicant

Versus

Kumar Pal Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Johan Kumar, Advocate,
for the applicant.

INDERJIT SINGH, J.

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

Applicant-Bhagat Singh has filed these applications under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against respondent-Kumar Pal Sharma, challenging the impugned judgments dated

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06.04.2015 passed by learned Judicial Magistrate Ist Class, Faridabad, vide which the 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 further stated that the trial Court has committed an error in acquitting the respondent. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that applicant-complainant, Bhagat Singh filed two complaints against respondent-accused Kumar Pal Sharma under Section 138 of the Negotiable Instruments Act. The facts commonly stated in the complaints are that the accused borrowed a friendly loan of ₹9 lakhs from the complainant in the month of November, 2011 as he was in the need of the money for his personal use. Thereafter, to discharge his legal liability, the accused issued two cheques dated 13.04.2012 amounting to ₹5 lakhs and dated 19.04.2012 amounting to ₹4 lakhs. When both these cheques were presented for encashment, the same were returned back with the remarks "Funds Insufficient" and "Exceeds Arrangement". When the amount was not paid, then the complaints were filed within time.

The complainant examined himself as CW 1 and tendered certain documents i.e. cheques, memo, legal notices, postal receipts etc. At the close of complainant's evidence, the 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. In defence, the accused examined himself as DW 1.

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Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 06.04.2015.

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 gone through the record.

Perusal of record shows that findings given by learned trial Court are correct, as per evidence and law. In no way, the findings of trial Court 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.

Perusal of record shows that no date has been given on which a huge amount of ₹9 lakhs was given. No other particulars of any type have been given in the complaint. It is not mentioned in complaint that at which place as well as in whose presence and how the money was given. It is also not mentioned in the complaint as to whether the money was given on interest or without interest. No receipt or any security document was obtained. There is no document on record including the income-tax returns etc. to prove the loan transaction. The case of accused is that he had not issued cheques in question in discharge of any legal debt and liability and the same were issued as security cheques as he had borrowed an amount of ₹1,00,000/- from the complainant and he has duly repaid that amount, but cheques of accused were not returned by the complainant and he

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(complainant) misused the same. It was also argued before the lower Court on behalf of the accused that particulars of the cheques were filled with a different pen and signatures on the cheques were with different pen. During the cross-examination, the complainant admitted that he has advanced ₹1,00,000/- to the accused through cheque and the said cheque was cleared on 03.03.2010. It is also in the cross-examination of the complainant that the said amount was already repaid by the accused. Perusal of cross-examination of complainant further shows that he has not shown the source of such a huge amount of ₹9 lakhs. He stated that he is a property dealer, but no record of any type has been proved to show this transaction. If the complainant is a property dealer, he might be maintaining the record. It is also in the cross-examination of the complainant that he used to show all the transactions of property in his income-tax returns, but no such income-tax return has been placed on record to show the sale of plot for which he had received ₹9 lakhs which amount has been stated to be paid to the accused. During his cross-examination, the complainant even failed to tell as to whether the plot which he sold for ₹9 lakhs, was registered in his name or not. Perusal of record also shows that a probable defence has been raised by the accused which is duly supported and corroborated by the case of complainant himself and also by the defence evidence produced by the accused.

From the perusal of the judgments passed by the court below, I find that the findings have been given by appreciating the evidence in right perspective and the accused-respondent has been rightly acquitted. In no

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way, the judgments can be held as perverse or against the evidence.

In view of the above discussed evidence, I find that the impugned judgments dated 06.04.2015 passed by learned Judicial Magistrate Ist Class are correct, as per evidence and law 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.

09.10.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

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