IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-1703-MA of 2017 (O&M)

Sanya Jain

...Applicant

Versus

Taxila Business School and another

...Respondents

(ii) CRM No.A-1708-MA of 2017 (O&M)

Sanya Jain

...Applicant

Versus

Taxila Business School and another

...Respondents

Date of decision: November 20, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikrant Guleria, 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-Sanya Jain has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Taxila Business School and Prof. Anuradha Mehta, challenging the impugned judgments dated 24.05.2017 passed by learned Judicial Magistrate Ist Class, Chandigarh, 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, therefore, prayed that leave to appeal be granted.

As per the record, complainant Sanya Jain filed complaints against Taxila Business School and other accused under Section 138 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-1703-MA of 2017. As per complainant's version, accused Prof. Anuradha Mehta, Chairman and Authorised Signatory, Prof. Rajat Bohra, Dean, Mr.Kishore Sharma, Mentor and Ms.Ritu Singh, Admission Officer, Taxila Business School are Incharge and responsible for the conduct of this educational institution of Taxila Business School. They all have been individually and collectively looking after all the work of Taxila Business School. To discharge the legal liability, accused had issued cheque No.000818 dated 12.12.2012 for ₹1,00,000/- in favour of the complainant. In the second complaint, accused had issued cheque No.000819 dated 21.01.2013 for ₹2,24,000/-, in favour of the complainant. Both the cheques on presentation for encashment, were returned back with the remarks 'Funds insufficient' and 'Payment stopped by drawer' respectively. Legal notices were served. When the amount was not paid, then the complaints were filed within time.

The complainant examined CW-1 Naresh Kumar Jain, Special Power of Attorney of the complainant and CW-2 Twinkle Krishna. At the close of complainant evidence, accused were examined under Section 313 Cr.P.C. and they were confronted with the evidence. They denied all the incriminating evidence against them and pleaded their innocence and false implication. Accused further pleaded as under:-

> "*Accused stated that the complainant has taken admission in MBA course with their college in the year 2012 and after some time of taking admission her behaviour with the staff was not good and she along with some other student started cheating bad atmosphere in the college by raising false and frivolous allegation against the college and she was warned to improve her behaviour but she was adamant on her bad behaviour and threatened the staff and college of dire consequences and thereafter she made a request to refund the admission fees on 25.9.2012 and in order to save the reputation of the Institute and due to consistent bad behaviour and threats given by her three cheques bearing No.000817, 000818 and 000819 were issued for totaling of Rs.3,74,100/- without any date with the condition that her request for refund of the fees and she will only be entitled for presentation of the cheques in question only if the management committee of the institution accept her request for refund of the fees as there was no policy for refund of the fees and the matter for refund of her fees was taken in the management committee and her request for refund was declined by the management committee and the decision of the management committee was communicated to her vide e-mail dated 9.10.2012 i.e. Ex.C12 and she was asked to refund the cheques in question but she presented the cheque in question for encashment and sent the legal notice which was duly replied which is already on record as Ex.C11 in which again she was asked to refund the cheque and not to pursue the complaints but she filed the complaints and thereafter again the management committee decided later on in June 2013 to refund her fees and decided to make the payment of cheques in question (three cheques of totaling of Rs.3,74,100/-) and accordingly on 19.6.2013 and amount of Rs.3,74,100/- was paid in cash to the complainant and Ex.D1 was duly executed and singed by the complainant after receiving the said amount of Rs.3,74,100/- i.e. amount of the three cheques in question i.e. 000817, 000818, 000819 and she promised to withdraw the three complaints filed against the college i.e. accused and she also handed over the original admission documents and fees documents at the time of execution of Ex.D1 to them on dated 19.6.2013 and the same are Mark DA to Mark DD but she did not withdraw the complaints filed against the institute even after the receiving the amounts of the cheques in question and there is no legal liability against them and complaint have been continued to harass and humiliate them as she did not comply with her promise to withdraw the complaint.*"

Learned JMIC, Chandigarh, after appreciating the evidence, acquitted the accused-respondents vide impugned judgments dated

24.05.2017.

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

Lower Court record was also requisitioned.

I have heard learned counsel for the applicant and have gone through lower Court 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.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused by raising probable defence. In the present case, the accused have proved on record receipt Ex.D1, which is dated 19.06.2013, which is admittedly signed by complainant Sanya Jain. The perusal of this document shows that ₹3,74,100/- was paid in cash against cheque No.000817 dated 09.10.2012, cheque No.000818 dated 12.12.2012 and cheque No.000819 dated 21.01.2013 and Sanya Jain complainant signed on the revenue stamp on the receipt, where it is written 'received the sum of Rupees Three lakh seventy four thousand one hundred today on 19.6.2013 on Account of cheques No.000817, 000818, 000819'. The cheque in the first complaint is bearing No.000818 and in the second complaint, the cheque is bearing No.000819.

It means that complainant has already received the amount during the pendency of these complaints and complainant had not withdrawn the complaints. The complainant has already settled the matter with the accused and have taken the benefit under the settlement and received total amount. Now, learned counsel for the complainant denied this fact regarding receiving of the amount. There is documentary evidence and signatures of the complainant on the receipt were admitted by learned counsel for the complainant. Sanya Jain has not stepped into witness box. Only her power of attorney has come and on so many facts, he has avoided the questions of the defence counsel in cross-examination. When once the complainant has received the amount and settled the matter, she cannot continue with the present complaints. Furthermore, defence raised by the accused has been duly supported and corroborated by the case of the complainant itself. No evidence has been produced to show that receipt Ex.D1 was not signed by complainant Sanya Jain.

Moreover, the complainant herself has not stepped into witness box and in her absence, her father as power of attorney has appeared as a witness. When the question was put to the attorney that whether his daughter was attending the college, he replied that his daughter has attended the college of accused for about 1½ month and regarding of payment of the fees of ₹3,95,000/- as alleged by the complainant in her complaint, he failed to place on record any receipt for the payment. He replied in the cross-examination that admission fees was deposited in the bank account of the accused but no such receipt was produced. When the fees was deposited by the complainant and she studied in the college for 1½ month, then how she is entitled to refund of that fees. No provisions or terms and conditions have been shown regarding that. If the complainant is not entitled to refund of the amount, then where is the question of legal liability to pay the alleged amount by the accused. Furthermore, as already discussed, receipt Ex.D1 shows that complainant has received ₹3,74,100/- in cash in lieu of the cheques. Therefore, to pursue with the complaints, is nothing but malafide intention to harass the accused. Receipt Ex.D1 remained un-rebutted on the record. No evidence has been produced to challenge that receipt and signatures of the complainant on that receipt has been admitted.

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 24.05.2017 passed by learned JMIC, Chandigarh, 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**