

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

(i) CRM No.A-144-MA of 2014 (O&M)

Balwinder Sharma

...Applicant

Versus

Rajinder Kumar

...Respondent

(ii) CRM No.A-175-MA of 2014 (O&M)

Amanjot Singh

...Applicant

Versus

Rajinder Kumar

...Respondent

Date of decision: December 03, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Deepak Gupta, Advocate
for the applicants.

Mr.Achin Gupta, Advocate
for the respondent.

INDERJIT SINGH, J.

CRMs No.3222 and 3635 of 2014

These are applications under Section 5 of the Limitation Act for condoning the delay of 1335 days in filing the applications seeking leave to appeal.

It is stated in the applications that against the judgments of acquittal dated 02.06.2010 passed by learned Judicial Magistrate Ist Class, Bathinda, applicants had wrongly filed criminal appeals before the Court of Session, Bathinda, which was disposed of being not maintainable and

therefore, the delay of 1335 days has occurred in the filing the applications

under Section 378(4) Cr.P.C. before this Court.

Heard.

For the reasons mentioned in the applications, the same are allowed. Delay of 1335 days each in filing the applications seeking leave to appeal, is condoned.

Main applications

Both the above-mentioned applications are taken up together as point for determination in both the cases is same and findings of learned Court below are almost same.

Applicants have filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Rajinder Kumar, challenging the impugned judgments dated 02.06.2010 passed by learned Judicial Magistrate Ist Class, Bathinda, vide which the accused-respondent was acquitted.

It is mainly stated in the applications that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainants Balwinder Sharma and Amanjot Singh filed complaints against accused Rajender Kumar under Section 138 of the Negotiable Instruments Act. In CRM No.A-144-MA of 2014, the complainant's version is that accused had taken friendly loan from him and accused in partial liability, issued cheque No.614315 dated 03.08.2009 for ₹45,000/-, in favour of the complainant. In CRM No.A-175-MA of 2014, the complainant's case is that accused took friendly loan from him and in partial liability, the accused issued cheque No.614317 dated

assured the complainants that the cheques would be honoured but on presentation of cheques for encashment, those were returned back with the remarks 'Funds Insufficient'. Legal notices were served. When the amounts were not paid, then the complaints were filed within time.

The complainants examined themselves as CW-1 in each case and tendered into evidence documents i.e. cheques, memos, legal notices, postal receipts etc. At the close of complainants' evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him. In defence, accused examined DW-1 Ishwinder Singh.

Learned JMIC, Bathinda, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 02.06.2010.

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

Notice of the applications.

Mr.Achin Gupta, Advocate, who had already been appearing on behalf of respondent on notice regarding applications for condonation of delay, accepts notice of main cases on behalf of respondent and contest the same.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties 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

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 complainants have 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 complaints. No receipt or security document was got executed while lending loan to the accused. Otherwise also, there are no particulars, that how much amount has been given. In both the complaints, it is stated that cheques were issued in discharge of partial liability, which means that liability was more than the cheque amounts. No particulars of any type have been mentioned. Nothing has been mentioned that at which place, in whose presence the loans were advanced and what was the mode of giving the amount, whether by cheque or by cash. There is no document on record to show the loan transactions. All these facts are fatal to the case of the complainants in view of the law laid down by the Hon'ble Supreme Court in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*.

DW-1 Ishwinder Singh has appeared in this case to support the defence version, who stated that cheques were blank and only signed by accused Rajinder Kumar. He further stated that these cheques have been filed by him at the instance of the complainant. The perusal of the cheques also shows that there is difference of ink between the body of the cheque and the signatures, which supports and corroborates the defence version.

Furthermore, the complainants have stated in the complaints

that cheques of ₹45,000/- and ₹75,000/- have been given in discharge of partial liability, which means that the liability was much more than the cheques amount but while appearing in the Court in the witness box, the complainants have deposed that they had given ₹45,000 and ₹75,000/- only. If, ₹45,000/- and ₹75,000/- had been given, then why it has been mentioned in the complaints that cheques were issued in discharge of partial liability. It is nowhere the case that the money was given on interest etc. This fact further supports and corroborates the defence version that he has not borrowed any loan from the complainants and blank signed cheques have been misused. In these circumstances, the defence raised by the accused is probable one, which is supported and corroborated from the case of complainant itself as well as defence evidence.

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 02.06.2010 passed by learned JMIC, Bathinda, 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 03, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No