

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

(i) CRM No.A-158-MA of 2015 (O&M)

Rajbir Singh

...Applicant

Versus

M/s Omsons Infrastructure Pvt. Ltd. and others

...Respondents

(ii) CRM No.A-161-MA of 2015 (O&M)

Rajbir Singh

...Applicant

Versus

M/s Omsons Infrastructure Pvt. Ltd. and others

...Respondents

(iii) CRM No.A-263-MA of 2015 (O&M)

Rajbir Singh

...Applicant

Versus

M/s Omsons Infrastructure Pvt. Ltd. and others

...Respondents

Date of decision: November 02, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vinish Singla, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.3352 of 2015 and CRM No.3355 of 2015

Heard.

For the reasons mentioned in both the applications, the same
are allowed. Delay of 8 days in filing the applications seeking leave to

appeal, is condoned.

Main applications

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

Applicant-Rajbir Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against M/s Omsons Infrastructure Pvt. Ltd. and other respondents, challenging the impugned judgments dated 15.10.2014 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 Rajbir Singh filed complaints against M/s Omsons Infrastructure Pvt. Ltd. and other accused under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused company took a loan of ₹3 lakhs through its Directors and in discharge of its liability, accused company issued cheques bearing No.379845 dated 10.01.2013, 379843 dated 10.11.2012 and 379844 dated 10.12.2012, each amounting to ₹1 lakh respectively, which on presentation for encashment, were returned back with the remarks 'funds insufficient'. Legal notices were served. When the amount was not paid, then the complaints were filed within time.

After summoning, accused Jasvinder Singh did not appear and he was declared proclaimed offender. Accused Baljit Singh was not summoned and complaint against him was dismissed. Only accused Sumit

Singla appeared.

The complainant examined himself as CW-1 and tendered documents; cheque Ex.C1, memo Ex.C2, legal notice Ex.C3, postal receipts Ex.C4 to Ex.C7. Complainant also examined CW-2 Balvinder Singh, Addl. Criminal Ahlmad, who deposed on the basis of record that three complaints all titled as 'Vikram Singh vs. Sumit Singla' were dismissed on 25.07.2014 for want of prosecution and two complaints, titled as 'Shiv Kumar vs. M/s Onkar Shuttering Store' were dismissed on 23.07.2014 for want of prosecution. CW-3 Surinder Kumar Sharma, Manager, Punjab National Bank, produced the summoned record and deposed that return memo Ex.C2 has been issued from his bank. CW-4 Constable Jaswant Singh brought the summoned record pertaining to FIR No.282 dated 14.10.2009, photocopy of which was produced by him. CW-5 Head Constable Sukhdev Singh produced the FIR No.173 dated 10.05.2014, photocopy of which was placed on record.

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. Accused further pleaded that cheque in question was given by him to the complainant as security for supply of shuttering material but their agreement could not mature and complainant did not return the cheque and misused the same. He also pleaded that no cash amount was ever borrowed from complainant and cheque in question has not been issued in discharge of any legal liability. In defence, accused examined DW-1 Prashant Kumar, UDC, Office of Registrar of Companies.

Learned JMIC, Chandigarh, after appreciating the evidence,

acquitted the accused-respondents vide impugned judgments dated

15.10.2014.

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

Lower Court records were requisitioned.

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.

Further, I find that, no date, month and year has been mentioned in the complainant as to when liability arose. No document has been produced on record to show the loan transaction. No other particulars of any type have been mentioned in the complaint. No receipt or security document was got executed while lending a huge amount of ₹3 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.

Next, I find that no document has been produced by the

Infrastructure Pvt. Ltd. There is no document on record of any type to show the loan transaction. As per complainant, the loan was given to the company M/s Omsons Infrastructure Pvt. Ltd. If the loan was given to the company, then there should have been some document on record to show this loan transaction. Otherwise also, if a private person would give loan to a company, which is dealing in some business, then he will not lend the loan without interest etc. Moreover, the complainant stated in his statement that he has given money by visiting the house of Sumit Singla. There is no Resolution by the company to borrow the loan nor any account books of the accused were summoned by the complainant to show this transaction. If a company borrows any loan or does any business dealing, it is always mentioned in the account books and also in income tax return.

Further, I find that present complainant is also doing business of shuttering and might be maintaining account books but he has also not produced any account books to show this loan transaction. There is no mention of any type in the complaint regarding this loan transaction. The complainant himself has stated that he has no document to show that accused Sumit Singla is Director of accused-company. He also stated that he could not tell exact date of advancement of loan of ₹3 lakhs but stated in cross-examination that it was in the month of October 2012.

Learned trial Court after appreciating the evidence held that no particulars have been mentioned; there is no document to show the loan transaction; no date as to when the loan was demanded back and relied upon the law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028.***

Section 139 of the Negotiable Instruments Act has been duly rebutted by raising probable defence, which is supported and corroborated by case of the complainant itself.

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 15.10.2014 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, all the applications stand dismissed.

November 02, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No