

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-228-MA of 2014 (O&M)

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Date of decision:5.12.2018

Jagjit Singh through his LRs

...Applicant

v.

Amit Khullar and another

...Respondents

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(2) Criminal Misc. No.A-345-MA of 2014

.....

Jagjit Singh through his LRs

...Applicant

v.

Amit Khullar and another

...Respondents

....

(3) Criminal Misc. No.A-1093-MA of 2014

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Jagjit Singh through his LRs

...Applicant

v.

Amit Khullar and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Shekhar Verma, Advocate for the applicant.

Mr. Sanjay Nagpal, Advocate for respondent No.1.

Mr. Pawan Sharda, Senior Deputy Advocate General, Punjab
for the respondent No.2-State.

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Inderjit Singh, J.

Earlier these applications were filed by Jagjit Singh, however, he died during the pendency of these application and his LRs have been brought on record. This order will dispose of the above mentioned three criminal miscellaneous applications seeking leave to file appeals. The complainant/ applicant has filed these criminal miscellaneous applications under Section 378(4) Cr.P.C. against Amit Khullar and State of Punjab for grant of leave to appeal against the impugned judgments dated 26.11.2013 passed by learned Sub Divisional Judicial Magistrate, Samrala, vide which the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') have been dismissed and the accused has been acquitted of the charges as framed against him. All these cases are taken up together as these are between the same parties and regarding the same transaction.

It has been mainly submitted in the applications that the applicant is 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 the learned trial Court has committed grave error in law and on facts while passing the acquittal orders in favour of respondent/ accused. The impugned judgments are based upon complete misappreciation of evidence and legal aspects which has caused serious prejudice to the interest of the applicant/complainant. It has, therefore, been prayed that these applications seeking leave to file appeal be allowed and leave be granted to the applicant to file appeals.

As per the allegations in the complaint (Cr. Misc. No.A-228-MA of 2014), the accused issued cheque No.402582 dated 3.3.2008 for ₹2 Lakhs in favour of the complainant to discharge the liability as the accused had taken ₹10,00,000/- for business purposes and issued five cheques of ₹2 Lakhs each.

So far as the complaint (Cr. Misc. No.A-345-MA of 2014) is concerned, the accused issued cheque No.402582 dated 3.3.2008 for ₹2 Lakhs in favour of the complainant to discharge the liability and in the complaint (Cr. Misc. No.A-1093-MA of 2014), he issued cheque No.402582 dated 3.3.2008 for ₹2 Lakhs in favour of the complainant to discharge the liability.

On presentation of the cheques for encashment, the same were returned back with the remarks “funds insufficient”. Legal notices were given. When the amount was not paid, the complaints were filed.

Notice of accusation has been served upon the accused under Section 138 of the NI Act, to which the accused pleaded not guilty and claimed trial.

In order to prove his case, complainant-Jagjit Singh examined himself as CW-1, Tarsem Singh, Computer Operator as CW-2 and Gurdev Singh as CW-3 and closed his evidence.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant, but he denied the correctness of the same and pleaded himself as innocent. The accused had taken the plea that the

complaint is false and that Mittarpal Singh son of the complainant had already executed a sale deed dated 23.7.2007 regarding his property situated in village Bondli on main Samrala-Chandigarh road valuing about ₹1 Crore. Sukhraj Singh son of the complainant had also prepared an agreement to sell dated 13.6.2007 regarding sale of his land situated at Village Hidon, Tehsil Samrala falsely but they have not transferred property in his name. In defence, the accused examined Charanjit Singh as DW-1. The accused also brought documents on record, namely, account opening form Ex.D.1, copy of cheque issuance register Ex.D.2, account statement of M/s Bharat Oil Company Exs.D.3 and D.4, attested copy of voter list Ex.D.4 etc.

The learned Sub Divisional Judicial Magistrate, Samrala, vide impugned judgments dated 26.11.2013 acquitted the accused. Aggrieved from the said judgments, the present appeals along with applications seeking leave to file appeals have been filed by the complainant.

Notice of motion was issued in these cases.

Mr. Sanjay Nagpal, learned Advocate has appeared on behalf of respondent No.1 and Mr. Pawan Sharda, learned Senior Deputy Advocate General, Punjab has appeared on behalf of respondent No.2-State and contested these applications.

I have heard learned counsel for the parties as well as learned State counsel for respondent No.2-State and have gone through the record.

From the perusal of the record, I find that the findings have been given by the learned Sub Divisional Judicial Magistrate, Samrala, in

the impugned judgments dated 26.11.2013 as per evidence and law. In no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out as to how the findings given by the learned Court below are 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.

A perusal of the record shows that the cheques have been issued from the account of M/s Bharat Oil Company but that Company has been owned by mother of the accused, namely, Usha Khullar. The accused is not a partner in that Company. Learned counsel for the applicant-complainant stated that Amit Khullar is an authorised signatory of M/s Bharat Oil Company. A perusal of the record shows that it is not the case of the complainant that the amount was given to M/s Bharat Oil Company or to Usha Khullar. But it is the case of the complainant that ₹10 Lakhs have been given to Amit Khullar. Neither M/s Bharat Oil Company nor Usha Khullar have been impleaded as parties in these cases. There is a case that Usha Khullar had given two authorization letters in favour of M/s Bharat Oil Company. The issuance of the cheques by Amit Khullar from the account of M/s Bharat Oil Company cannot be held that this cheque was issued from the account of the drawer and one of the necessary ingredients is missing. Further, I find that no date, month or year has been mentioned in the complaints as to when ₹10 Lakhs were given to the accused. There is no document on record to support this loan transaction. No receipt or security documents were taken. Even there is nothing as to on which date the

cheques No.633215 to 633272 were given to the complainant. The complainant has also not produced any cogent evidence regarding his source of income. In the cross-examination, he stated that he can tell the date, month or year etc. when the loan was borrowed by the accused from him by seeing his bank passbook. However, despite directions of the Court, the complainant has never produced any such passbook of his Bank Account. The complainant has also admitted that he has not brought even statement of his bank account. Even the complainant has shown ignorance that his son Mittarpal Singh and Harinderpal Singh Khaira had got executed a sale deed dated 23.7.2007 from Amit Khullar of the petrol pump to secure the loan amount. The accused has raised a probable defence which is duly supported and corroborated from the case of the complainant as well as defence evidence. The presumption under Section 139 of the NI Act has been duly rebutted by the accused by raising a probable defence. The law laid down by the Hon'ble Supreme Court in Vijay v. Laxman, (2013) 3 SCC 86 also fully applies to the facts of these cases.

Keeping in view the above facts, I find that the findings given by the learned trial Court in these cases are correct as per evidence and law. There is nothing on the record to show that the findings are against the evidence or law. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, 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 file appeal, the same are dismissed.

December 5, 2018.

(Inderjit Singh)
Judge

hsp

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