

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

(i) CRM No.A-311-MA of 2014 (O&M)

Smt.Vidya Parkash

...Applicant

Versus

Jitender Bhuker proprietor M/s Vishan International and another

...Respondents

(ii) CRM No.A-344-MA of 2014 (O&M)

Smt.Vidya Parkash

...Applicant

Versus

Jitender Bhuker proprietor M/s Vishan International and another

...Respondents

Date of decision: September 14, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.M.S.Dua, Advocate for
Mr.Harkanwar Jeet Singh, Advocate
for the applicant.

Mr.Navneet Singh, Advocate
for the respondent.

INDERJIT SINGH, J.

CRM No.6832 of 2014 in CRM No.A-311-MA of 2014

Heard.

For the reasons mentioned in the application, the same is
allowed. Delay of 11 days in filing the application seeking leave to appeal,
is condoned.

CRM No.7685 of 2014 in CRM No.A-344-MA of 2014

Heard.

For the reasons mentioned in the application, the same is

allowed. Delay of 6 days in filing the application seeking leave to appeal, is condoned.

Main applications

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

Applicant-Smt.Vidya Parkash has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Jitender Bhuker proprietor M/s Vishan International and Jitender Bhuker, challenging the impugned judgments dated 16.12.2013 passed by learned Judicial Magistrate Ist Class, Panipat, vide which the accused-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 judgment of acquittal has caused grave miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Smt.Vidya Parkash filed complaints against accused M/s Jitender Bhuker proprietor M/s Vishan International and Jitender Bhuker under Section 138 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-311-MA Of 2017. As per complainant's version, parties were known to each other as complainant being manufacturer and supplier of all kinds of carpets and polyester yarn goods, had supplied the same to the accused for a sum of ₹13,75,868/- upto 30.06.2007 against which accused had issued two cheques bearing No.501105 dated 16.07.2007 amounting to ₹4,00,000/- and

between the parties regarding payment and matter reached to the police station, where the accused agreed to give payment to the complainant and made cutting of the date of the cheques i.e. 16.7.2008 instead of 16.7.2007 and 16.9.2008 instead of 20.9.2007 under his signatures. When the cheques were presented for encashment, those were returned back with the remarks 'not having sufficient funds' and 'payment stopped by the drawer'. Legal notices were served. When the amount was not paid, then the complaints were filed within time.

The complainant examined herself as CW-1 and tendered certain documents. 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. In defence, accused examined DW-1 Shyam Lal Thakur.

Learned JMIC, Panipat, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 16.12.2013.

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

Notice of the applications were issued. Learned counsel for the respondent appeared and contested the applications.

Lower Court records were 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.

Further, as regarding cheque of ₹4 lakhs bearing No.501105, I have seen the cheque in original in the record. The date 16.7.2007 has been admittedly changed to 18.7.2008. No signatures of accused are there on the cutting. The cheque date is tampered and it does not bear the signatures of the drawer on the cutting, therefore, this cheque will be treated as tampered with and no relief can be granted on the basis of this cheque. Furthermore, it is nowhere the case of the complainant that when the cheque was earlier given on 16.07.2007, it was presented before the bank within stipulated period or it has dishonoured due to insufficient funds etc.

As regarding second cheque of ₹50,000/- bearing No.501167, I find that there is cutting on the date which has been changed from 20.08.2007 to 16.9.2008 but there are signatures of the drawer on the cutting. As per case of the complainant, these signatures were obtained on the cutting in the police station. As per complainant, the matter was settled and a writing was executed in the police station, which is dated 13.03.2008 and proved on the record. As per this writing, total amount was to be paid within three months by the accused i.e. ₹1 lakh upto 31.03.2008, ₹1,37,500/- within one month from 13.03.2008 and ₹1,37,500/- within 90 days but there is no mention that the cheques which were given earlier to the complainant have been got validated by making cuttings etc. or the

period. Rather, perusal of the above-said document further shows that there is averment that on making of payment as per compromise, both the cases relating to the cheques will be withdrawn, which means that this settlement was not executed on 13.03.2008 because at that time, no complaints regarding cheques in question were pending. Even if it is taken that cutting on the cheque of ₹50,000/- is there and was got signed in the police station from the accused, it will show that it was under police pressure and this fact has not been proved by the complainant that accused has voluntarily gave the cheques under the compromise after making cuttings on the same. Therefore, from the above, I find that both the cheques were tampered with and these were not presented within stipulated period earlier in the year 2007 when originally these cheques were stated to have been given to the complainant. On the basis of tampering of dates on the cheques, no relief can be granted to the complainant.

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 16.12.2013 passed by learned JMIC, Panipat, 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.

September 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No