

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

(i) CRM No.A-601-MA of 2015 (O&M)

Amreen Malik

...Applicant

Versus

Raj Kumari

...Respondent

(ii) CRM No.A-602-MA of 2015 (O&M)

Amreen Malik

...Applicant

Versus

Raj Kumari

...Respondent

Date of decision: November 01, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Anand Kumar Bishnoi, Advocate
for the applicant.

INDERJIT SINGH, J.

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

Applicant-Amreen Malik has filed these applications under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent Raj Kumari, challenging the impugned judgments dated 11.02.2015 passed by learned Judicial Magistrate Ist Class,

Faridabad, 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 further stated that in case, the leave is not granted, the applicant would suffer an irreparable loss. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Amreen Malik filed complaints against accused Raj Kumari under Section 138 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-601-MA of 2015. As per complainant's version, accused borrowed a friendly loan of ₹2,25,000/- from her for personal use in the month of February 2011 and promised to repay the same within a period of three months. After admitting the liability, the accused made the repayment of the said loan amount for which she issued a cheque bearing No.230339 dated 02.08.2011 for a sum of ₹2,25,000/-, in favour of the complainant (cheque bearing No.230340 dated 01.09.2012 for a sum of ₹2 lakhs in CRM No.A-602-MA of 2015), which on presentation for encashment, were returned back dishonoured with the remarks 'Account Closed'. Legal notices were served. When the amount was not paid, then the complaint dated 12.11.2011 and complaint dated 25.10.2012 were filed within time, respectively.

The complainant examined herself as CW-1 and proved cheques, copy of bank return memo, bank return memo, legal notices, postal receipts and closed the evidence. At the close of complainant's evidence, accused was examined under Section 313 Cr.P.C. She was confronted with the evidence of the complainant and she denied all the incriminating evidence against her. She further pleaded that complainant is her sister-in-

stolen from her Almirah while she was on her job and besides cheques in question, three pair of gold tops, ration card, passbook of the same account were also stolen and when she tried to lodge a police complaint, her mother-in-law stopped her by saying that they do not want police to come to their home. In defence, accused examined DW-1 Heena Malik and DW-2 Aas Mohammad.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 11.02.2015.

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

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.

From the perusal of the record, I find that the complainant has 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 huge amounts 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. There is no document on record to show the loan transaction.

Further, perusal of the record shows that complainant is sister of husband of the accused, meaning thereby, they are closely related and part of one family. The fact that signed cheque can be taken away from same house is probable. The complainant while appearing in the witness box stated that she had lent amount to the accused on 02.04.2011 whereas in the complaint, it is stated that she had lent the loan in February 2011. Learned trial Court discussed the capacity of the complainant for advancing loan. Secondly, the Court discussed the fact that the complainant in her cross-examination stated that facts mentioned in the complaint are not correct as per her own point of view. Not only with the complaint, she has also made this statement in respect of legal notice as well as her affidavit. If complainant herself is stating that in her point of view her chief-examination by way of affidavit, legal notice and averments in the complaint are not correct, then it supports the defence version and rebuts the presumption under Section 139 of the Negotiable Instruments Act. Furthermore, there is nothing on the record to show the transaction.

As regarding second complaint, I find that when the complaint for dishonour of the cheque has already been filed in November 2011, then it is not explained, why again amount of ₹2 lakhs was lent in June 2012 and that too without any document. No ordinary person will do this. When the

Court, then complainant will not lend such a huge amount again to the same accused. All this shows that presumption has been rebutted and the complainant's version cannot be believed, especially, when she herself is saying that averments in her complaint, in her affidavit and legal notice, are not correct.

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 11.02.2015 passed by learned JMIC, Faridabad, 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 01, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No