IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM No.A-946-MA of 2017 (O&M)

M/s KBS Global Ltd.

...Applicant

Versus

Surinder Kumar Verma

...Respondent

(2) CRM No.A-1004-MA of 2017 (O&M)

M/s KBS Global Ltd.

...Applicant

Versus

Surinder Kumar Verma

...Respondent

(3) CRM No.A-1008-MA of 2017 (O&M)

M/s KBS Global Ltd.

...Applicant

Versus

Surinder Kumar Verma

...Respondent

(4) CRM No.A-1028-MA of 2017 (O&M)

M/s KBS Global Ltd.

...Applicant

Versus

Surinder Kumar Verma

...Respondent

(5) CRM No.A-1104-MA of 2017 (O&M)

M/s KBS Global Ltd.

...Applicant

Versus

Surinder Kumar Verma

...Respondent

(6) CRM No.A-1136-MA of 2017 (O&M)

M/s KBS Global Ltd.

...Applicant

Versus

Surinder Kumar Verma

...Respondent

(7) CRM No.A-1370-MA of 2017 (O&M)

M/s KBS Global Ltd.

...Applicant

Versus

Surinder Kumar Verma

...Respondent

Date of decision: September 13, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Anuj Balian, Advocate
for the applicant.

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INDERJIT SINGH, J.

All the above-mentioned cases are taken up together for decision as the point for determination in all the cases is the same.

Applicant-M/s KBS Global Ltd. has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeals against respondent Surinder Kumar Verma, challenging the judgments dated 17.02.2017 passed by learned Judicial Magistrate Ist Class, Ambala, whereby the accused-respondent was acquitted.

It is mainly stated in the applications that accompanying appeals are likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant M/s KBS Global Ltd. filed complaints against accused Surinder Kumar Verma under Section 138 of the Negotiable Instruments Act. The facts are taken from CRM No.A-946-MA of 2017. The complainant is a company incorporated under Companies Act and is represented through its authorized representative. Sh.Mukhendra Singh has been authorized by the complainant company vide resolution dated 23.05.2012. As per complainant's version, accused's daughter had taken a loan of ₹80,00,000/- from the complainant under a loan agreement executed between accused's daughter and complainant. As per said loan agreement, accused was to pay an interest @ 1.5% per month payable after every four months. In discharge of liability towards interest, accused, who was guarantor for repayment of the loan and interest, issued a cheque bearing No.160875 dated 31.02.2012 for ₹80,00,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'Insufficiency of Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In connected cases, separate cheques were issued qua same transaction.

The complainant examined authorized representative Kamal Kishore Bhando as CW-1, who proved cheque in dispute, bank memo, legal notice, courier receipt, postal receipt and resolution. At the close of the complainant evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant. He denied all the incriminating evidence against him and pleaded his innocence. In defence, accused examined DW-1 Surinder Singh.

Learned JMIC, Ambala after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 17.02.2017.

I have heard learned counsel for the applicant and have gone through the record.

From the perusal of the judgments passed by the Court below, I find that the findings have been given as per evidence and law. The evidence has been appreciated in right perspective. In no way, the judgments can be held as perverse or against the evidence. 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.

Further, the perusal of the record shows that in the complaint, the complainant has not mentioned any particulars regarding the liability, except general allegations that accused's daughter, under a loan agreement, taken a loan of ₹80,00,000/- from the complainant. There is no date, month and year as to when the loan was advanced to the accused's daughter. There is no date, month and year as to when the agreement was executed between the parties. Even, name of daughter of the accused has not been mentioned nor any purpose has been mentioned for which the loan has been taken. Neither age of daughter of accused nor any fact whether she was studying or doing business, has been mentioned. There is also nothing on the record that any receipt has been taken while advancing the loan. There is also nothing whether amount was paid in cash or by way of cheque etc. The complainant is a firm maintaining account books but no document of any type has been produced on the record to show the loan transaction. As per the allegations in the complaint, accused's daughter has taken loan but even in the complaint, there is no mention regarding execution of guarantee deed, if any, by the accused. No date, month, year regarding guarantee deed has been mentioned. No such document has been produced to show that accused stood guarantor for repayment of loan. The best evidence is account books of the complainant-firm, but those were not produced. No income tax return has been produced. No source of income has been shown. Nothing has been mentioned that from where such a huge amount of ₹80 lakhs was given, whether, it was lying in cash or it was paid after withdrawing from the bank.

The defence of the accused is that no such liability arose between the parties nor any such loan was taken. As per defence version, various blank signed cheques and blank signed papers were taken by one C.M.Bhando, on the pretext of various memorandum of understanding and later on, in collusion with Kulwinder Pal Singh and other directors of Harman Properties, have fabricated cheques and filed various complaints despite the fact that no loan of any kind was ever disbursed and no transaction had taken place with the complainant. C.M.Bhando admittedly is brother of CW-1 Kamal Kishore Bhando. The accused in defence has also proved FIR No.212 dated 12.10.2016 under Sections 406, 420, 120-B and 506 IPC. CW-1 in cross-examination, identified the signatures of his brother C.M.Bhando on document Mark D1. He also admitted his signatures on document Mark D6. He also stated that nature of work of M/s KBS Global/complainant is financing and real estate but the complainant company does not have any money lending licence. As per defence version, same allegations have been levelled in the FIR against the complainant party.

Learned trial Court, keeping in view all these facts and specially the fact that no date, month, year has been mentioned nor any document of any type has been produced to show the loan transaction and by relying upon the law laid down in ***Vijay vs. Laxman and another, 2013 (1) RCR (Criminal) 1028***, acquitted the accused-respondent.

The perusal of the record shows that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted from the case of the complainant itself as well as from 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 17.02.2017 passed by learned JMIC, Ambala, 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 appeals and therefore, all the above-mentioned applications stand dismissed.

September 13, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**