

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

(i) CRM No.A-968-MA of 2017 (O&M)

Sudhir Kumar Yadav

...Applicant

Versus

Rakesh Kumar

...Respondent

(ii) CRM No.A-970-MA of 2017 (O&M)

Sudhir Kumar Yadav

...Applicant

Versus

Rakesh Kumar

...Respondent

Date of decision: August 23, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.P.Jangu, 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-Sudhir Kumar Yadav has filed these applications under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent Rakesh Kumar, challenging the

impugned judgments dated 02.03.2017 passed by learned Sub Divisional

Judicial Magistrate, Kosli, 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, therefore, prayed that leave to appeal be granted.

As per the record, complainant Sudhir Kumar Yadav filed complaints against accused Rakesh Kumar under Section 138 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-968-MA of 2017. The brief averments of the complaint as noted by down in the judgment passed by learned SDJM, Kosli, are as under:-

“2. Succinctly, case of complainant is that accused had taken a friendly loan of ₹5,79,000/- on 15.11.2013 from complainant and assured to return the same in six installments. Accordingly, he gave six cheques of ₹96,500/- each to return the amount bearing No. 120137 dated 10.01.2014, 120138 dated 10.02.2014, 120139 dated 10.03.2014, 120140 dated 10.04.2014, 120141 dated 10.05.2014 and 120142 dated 10.06.2014 drawn on State Bank of India, Branch Kosli. Complainant presented said cheques on 09.07.2014. Said cheques No. 120140, 120141 and 120142 were returned back on 25.07.2014 and returned with remarks “Funds Insufficient”. On 22.08.2014 complainant delivered legal notice to the accused through his counsel. Hence, present complaint. ”

The complainant examined himself as CW-1, PW-2 Tilak Ahuja and PW-3 Jyoti Yadav. 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. The accused took the defence that cheques in question were given to the complainant in the year 2011 for some loan that he had taken at that time. Said cheques were misused by complainant and

there is material alteration upon the dates and figures of the cheques. In defence, accused examined DW-1 V.B.Kashyap, Handwriting and Fingerprint Expert and himself as DW-2.

Learned SDJM, Kosli, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 02.03.2017.

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

Lower Court record was 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.

First of all, I find that it is settled law that if the cheque in question is tampered with, then complainant cannot be granted any relief. In the present case, I have seen the original cheques in the Lower Court record. From the face of it, it is clear that figure '9' has been inserted in the cheques before the amount '6500'. The perusal of the cheque shows that figure '6500' has been written in the normal course whereas '9' has been inserted before '6' in the figure. Similarly, these cheques look to be issued

in the year 2011 as last figure '1' has been changed to '4'. Both the parties have examined the Handwriting and Fingerprint Experts. Learned trial Court after noticing the report of the Expert produced by the accused and from the record, after seeing the cheques, has come to the conclusion that material alterations have been made in the cheques.

After seeing the cheques in the Lower Court record and after perusing the findings given by the Court below, I find that findings are correct, as per evidence and law and the cheques have been tampered with and material alterations have been made in the cheques. Therefore, accused is entitled to acquittal.

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 02.03.2017 passed by learned SDJM, Kosli, 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, both the applications stand dismissed.

August 23, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No