

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

(i) CRM No.A-1124-MA of 2013 (O&M)

Lt. Col. (Retd.) Jangbir Singh

...Applicant

Versus

Lt. Col. Sanjiv Gupta

...Respondent

(ii) CRM No.A-1125-MA of 2013 (O&M)

Lt. Col. (Retd.) Jangbir Singh

...Applicant

Versus

Lt. Col. Sanjiv Gupta

...Respondent

Date of decision: January 24, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.S.Sudan, Advocate
for the applicant.

Mr.Gaurav Kathuria, Advocate
for the respondent.

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-Lt. Col. (Retd.) Jangbir Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Lt. Col. Sanjiv Gupta, challenging the impugned

judgments dated 24.10.2013 passed by learned Judicial Magistrate Ist Class,

Rohtak, vide which the accused-respondent was acquitted.

It is mainly stated in the applications that accompanying appeal are being filed which are likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Lt. Col. (Retd.) Jangbir Singh filed complaints against accused Lt. Col. Sanjiv Gupta under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Rohtak in CRM No.A-1124-MA of 2013, are as under:-

“The present complaint pertains to the fact that in the year 2005, the accused requested the complainant to lend him some money so that he may start some business on which the complainant lend the money from time to time on interest @ 15% p.a. In November, 2005, on the request of the accused, the complainant opened a joint account with the wife of the accused by depositing Rs.3,00,000/- in cash and the complainant kept on paying the accused as per his requirement either in cash or through cheque. Further in 2007, the account was settled between the complainant and the accused where Rs.13,50,000/- was owed by the accused towards the complainant in lieu of which the accused issued two post dated cheques of Rs.10,00,000/- and Rs.3,50,000/- dated 10.3.2008 and 10.1.2009 respectively with the rider that if the accused would pay Rs.15,000/- per month then the cheque dated 10.3.2008 will not be presented on the due date, however, if the accused failed to honour the same, the cheque would be presented for encashment, however, the accused failed to make the payment per month on which the complainant presented the cheque amounting to Rs.10,00,000/- bearing no.669663 for encashment, however, the same was returned unpaid vide return memo dated 30.8.2008 on which legal notice dated 18.9.2008 has been served upon the accused asking to repay the cheque amount, however, the accused failed to repay the same within the stipulated period of time. Hence, this complaint.”

(in second complaint, cheque amounting to ₹3,50,000/- dated 10.01.2009 was returned back unpaid).

The complainant examined himself as CW-1 and proved

documents i.e. cheques, deposit receipts, memorandums, memos, legal notices, postal receipts. The complainant also examined CW-2 Ved Parkash and further examined CW-3 Parveen, Clerk, who proved that account No.4079 stands jointly in the name of Sanjeev Gupta and Ms.Virma Gupta. The complainant also tendered documents, i.e. letter dated 05.02.2010 Mark A and statement of account Mark B etc.

At the close of complainant evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him and pleaded his innocent and false implication. In defence, accused examined DW-1 Amit Kochar, DW-2 Om Parkash, DW-3 Aasish Kathuria, DW-4 Amit Dahiya, DW-5 Manoj and DW-6 Parveen Kumar. Accused also tendered some documents in defence.

Learned JMJC, Rohtak, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 24.10.2013.

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

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

Lower Court records were also 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.

From the perusal of the record, I find that from 10.11.2007 to 16.07.2008, accused made payments to the complainant, which learned trial Court, stated to be ₹1,07,000/-. This amount has been paid after the issuance of the cheques but complainant has issued legal notices in both these complaints regarding cheque amounts i.e. ₹10 lakhs and ₹3,50,000/-, which amount was demanded in excess than the liability. Learned trial Court after relying upon the law, dismissed the complaints.

Now, learned counsel for the applicant argued that even if the amount is paid and that is deducted from the main liability, even then, liability of more than ₹10 lakhs remains against the accused and he should be convicted accordingly. The perusal of the record shows that it is not the case of the applicant-complainant that this amount has been deducted in second case regarding ₹3,50,000/- nor it is the case that legal notice in the second case has been given for less amount. The parties are same and transactions were same and cheques were given qua the liability at the same time. The amount of ₹1,07,000/-, admittedly, has been paid by the accused, which has been duly proved but this amount has not been deducted from the amounts claimed in the legal notices. As the complainant has issued legal notices more than the amount which was due, therefore, one of the necessary ingredient issuance of legal notice only regarding due amount, is

etc., there is no document on record to prove this fact.

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 24.10.2013 passed by learned JMIC, Rohtak, 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.

January 24, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No