

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

(i) CRM No.A-1824-MA of 2016 (O&M)

Karamjit Singh

...Applicant

Versus

Ravinder Singh and another

...Respondents

(ii) CRM No.A-1886-MA of 2016 (O&M)

Karamjit Singh

...Applicant

Versus

Ravinder Singh and another

...Respondents

Date of decision: April 09, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Dadwal, Advocate
for the applicant.

INDERJIT SINGH, J.

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

Applicant-Karamjit Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Ravinder Singh and State of Punjab, challenging the impugned judgments dated 26.08.2016 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, 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, therefore, prayed that leave to appeal be granted.

As per the record, complainant Karamjit Singh filed complaints against accused Ravinder Singh under Section 138 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-1824-MA of 2016. As per complainant's version, accused borrowed ₹7 lakhs (₹3 lakhs in CRM No.A-1886-MA of 2016) from the complainant for his domestic/business use and agreed to repay the same amount within three months. The accused in discharge of his liability, issued cheque dated 03.07.2013 bearing No.617196, (cheque bearing No.617194 dated 13.06.2013 in connected case), which on presentation for encashment, were returned back dishonoured with the remarks 'Funds Insufficient'. Legal notices were served. When the amount was not paid, then the complaints were filed within time, respectively.

The complainant examined CW-1 Manoj Kumar and examined himself appeared as CW-2 and tendered documents.

At the close of complainant's 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 innocence and false implication.

Learned JMIC, Hoshiarpur, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 26.08.2016.

Aggrieved from the above-said judgments, 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 complaint. No receipt or security document was got executed while lending such a huge amounts of ₹7 lakhs and ₹3 lakhs 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. All these facts are fatal to the case of the complainant as per the law laid down by the Hon'ble Supreme Court in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*.

Further, I find that the complainant in the cross-examination deposed that he had purchased land measuring 216 kanals at village

agreement to sell which was executed in the month of April 2011. He also executed agreement to sell through Ravinder Singh for purchasing land of one Gurmukh Singh and other person in 2011. He further admitted that he is on visiting terms with the accused and also admitted his signatures on agreement to sell Ex.D5. The complainant also admitted in his cross-examination that civil suit for specific performance of agreement to sell is also pending and further admitted that criminal complaint under Section 420 IPC filed against the accused, his wife and others, is pending in other Court. He deposed that he could not tell the date on which he has presented the cheque. He further stated that he made payment to the accused in the month of March 2013. The complainant admitted that a compromise was effected with the accused in the sum of ₹1.65 crores but he did not remember the date of execution of said compromise. He further admitted that as per terms and conditions of compromise, an amount of ₹10 lakhs was to be paid by the accused. He also admitted that as per compromise, land existing in the name of his wife Kirandeep and one Sushma Kohli, was to be transferred after receiving balance sale consideration amount. The complainant denied that he had been claiming amount of ₹10 lakhs falsely by presenting cheque in question. He stated that he could not tell that in view of agreement Ex.DA, he has already received ₹28 lakhs from accused Ravinder Singh in view of said compromise.

The perusal of the cross-examination of the complainant itself shows that there is dispute between the parties regarding some agreement to sell etc., which fact is admitted by the complainant. If civil and criminal litigation are already going on, then no question arises to lend such a huge amount without getting executed any security document or receipt etc.,

which makes the case of the complainant doubtful. Furthermore, none of the fact, regarding agreement to sell or regarding compromise etc. has been given in the complaint.

The accused has raised probable defence which is supported and corroborated from the case of the complainant itself. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

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 26.08.2016 passed by learned JMIC, Hoshiarpur, 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.

April 09, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No