IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-540-MA of 2018 (O&M)

Buta Singh

...Applicant

Versus

Mandeep Basra

...Respondent

(ii) CRM No.A-559-MA of 2018 (O&M)

Buta Singh

...Applicant

Versus

Mandeep Basra

...Respondent

(iii) CRM No.A-681-MA of 2018 (O&M)

Buta Singh

...Applicant

Versus

Mandeep Basra

...Respondent

(iv) CRM No.A-724-MA of 2018 (O&M)

Buta Singh

...Applicant

Versus

Mandeep Basra

...Respondent

Date of decision: January 30, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Sukhpreet Kaur, Advocate
for the applicant.

****

INDERJIT SINGH, J.

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

Applicant-Buta Singh has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mandeep Basra, challenging the impugned judgments dated 13.12.2017 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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 Buta Singh filed complaints against accused Mandeep Basra under Section 138 of the Negotiable Instruments Act. The facts are being taken from CRM No.A-540-MA of 2018. As per complainant's version, accused has taken ₹3 lakhs from him for sending him abroad but the accused failed to send the complainant abroad and when the complainant demanded that amount of ₹3 lakhs, then accused agreed to return the amount in seven installments and the same was admitted by the accused after filing a complaint by the complainant to the police against the accused. In order to discharge his legal liability, the accused issued seven post dated cheques to the complainant bearing No.000003 dated 30.03.2015 of ₹40,000/-, No.000004 dated 30.04.2015 of ₹40,000/-, No.000005 dated 30.05.2015 of ₹40,000/-, No.000006 dated 30.06.2015 of ₹40,000/-, No.000007 dated 30.07.2015 of ₹40,000/-, No.000008 dated 30.08.2015 of ₹40,000/- and No.000009 dated 30.10.2015 of ₹60,000/-, which is the subject matter of these complaints, in favour of the complainant. Accused also executed an affidavit to this effect in presence of marginal witnesses. The cheques, on presentation for encashment were returned back unpaid/dishonoured with the remarks 'Funds Insufficient'. Legal notices were served. When the amount was not paid, then the complaints were filed within time.

The complainant examined himself as CW-1 and closed the evidence.

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. Accused further pleaded as under:-

> "*that he is doing the business of embroidery work at Ludhiana. He purchased one china embroidery machine from complainant in the year 2013 for which he made the payment to him. He again purchased second embroidery china computer machine from complainant on July, 2014 for Rs. 2,00,000/-. He paid 4000/- as cash and gave two cheques bearing no. 359585 dated 18.08.2014 of Rs. 20,000/- and cheque bearing no. 359591 dated 31.12.2014 of Rs. 1,76,000/- of SBI, Sunder Nagar, Ludhiana, against the said purchase of the machine. Unfortunately the said cheques got dishonored. Complainant on 24.02.2015 filed a false complaint before Commissioner of Police Jalandhar against him and leveled false allegations that complainant had given Rs. 3,00,000/- to him for sending him abroad. He requested him to take back the said false complaint. Complainant then took seven blank signed cheques of HDFC Bank Rama Mandi Jalandhar in first week of March, 2015 and also got signatures on blank paper with the guarantee as and when he will make the payment of two cheques of Rs. 1,76,000/- and 20,000/- dated 31.12.2014 and 18.08.2014 respectively, the complainant will withdraw the said complaint before police and will return the above-said two cheques and also seven blank cheques to him. He thereafter paid Rs.1,96,000/- on 17.03.2015 to complainant. Complainant made statement to the police that compromise has been effected as such he does not want to proceed with the complaint. Complainant returned original cheque of Rs.*

> *1,76,000/- to him but did not return the original cheque of Rs. 20,000/- dated 18.08.2014 on the pretext that its validity has been expired. He also requested him to give back seven blank cheques and signed blank paper. Complainant made an excuse that the same has been misplaced and he will return as and when he will found the same. Complainant also assured him that the said cheques will never be misused as the compromise has been effected. But the complainant illegally and unlawfully misused the said blank signed paper against him and converted into an affidavit dated 05.03.2015 and also complainant got my affidavit notarized. The complainant also misused the blank signed cheques of HDFC bank and filed four false complaints against him. He has no legal liability against the cheques of which complainant has filed the four complaints against him."*

In defence, accused examined DW-1 Jasbir Singh and DW-2 Surinder Pal, ACP, Licensing.

Learned JMIC, Jalandhar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 13.12.2017.

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 amount of ₹3 lakhs was paid to the accused. No document i.e. receipt or security document has been obtained at the time of payment of ₹3 lakhs. There is no document on record to show this transaction except the complaint made to the police etc. at the later stage. There are no particulars of any type that in which country and on which date the complainant wanted to go and what happened after giving of money, whether money was given in one go or on different dates. All these facts are fatal to the complainant's case in view of the law laid down by the Hon'ble Supreme Court in ***Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028***.

The accused has the defence that he has purchased embroidery machine for which he has made payment. Then again, he purchased second embroidery machine and gave two cheques of ₹20,000/- and ₹1,76,000/-. As per case of the accused, he has paid an amount of ₹1,96,000/-. At the time of arguments, learned counsel for the applicant admitted regarding return of cheque of ₹1,76,000/- to the accused, which supports and corroborates the defence version. The complainant in his statement also admitted that he has returned the cheque of ₹1,76,000/- to the accused, which was issued by the accused.

Furthermore, the complainant has relied upon the affidavit/writing dated 05.03.2015 in which it is mentioned that seven cheques have been given. The accused contested this document by stating that it is a forged document. Learned trial Court after appreciating the evidence held that this document has not been proved as per law as it is a photocopy and no permission for leading secondary evidence has been taken. Further, complainant has given statement on 17.03.2015 before the police, in which he has admitted that matter has already been compromised. This document was executed after the execution of Ex.C1 dated 05.03.2015. If any amount was still to be paid by the accused, then the complainant might have mentioned in his statement that he has already taken seven post dated cheques from the accused but there is no such statement. Further, as already discussed, in cross-examination the complainant stated that he has returned original cheque of ₹1,76,000/- on 31.12.2014, which supports and corroborates the defence version. The accused has also examined DW-1 Jasbir Singh to support his version.

It is settled law that the presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the accused has raised probable defence, which is supported and corroborated by the case of the complainant itself as well as defence evidence and presumption 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 13.12.2017 passed by learned JMIC, Jalandhar, 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, all the applications stand dismissed.

January 30, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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