IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.A-531-MA of 2014 (O&M)

Gurmail Singh Dhillon

...Applicant

Versus

Col. Ajit Singh Bhinder

...Respondent

(ii) CRM No.A-1232-MA of 2014 (O&M)

Gurmail Singh Dhillon

...Applicant

Versus

Col. Ajit Singh Bhinder

...Respondent

Date of decision: January 11, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harsh Aggarwal, Advocate
for the applicant.

Mr.Vivek Gupta, Advocate
for the respondent.

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INDERJIT SINGH, J.

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

Applicant-Gurmail Singh Dhillon has filed these applications under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent Col. Ajit Singh Bhinder, challenging the impugned judgments dated 16.01.2013 passed by learned Judicial

Magistrate Ist Class, Ludhiana, 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 Gurmail Singh Dhillon filed complaints against accused Col. Ajit Singh Bhinder under Section 138 of the Negotiable Instruments Act. The complaints were filed by the complainant through Power of Attorney holder M.L.Bhardwaj. The facts are being taken from CRM No.A-531-MA of 2014. As per complainant's version, accused took a friendly loan of ₹15 lakhs from the complainant in the month of April 2001 and agreed to return the same within a short period. Thereafter, complainant was in need of money and he requested the accused to return the amount but accused postponed the matter on one false pretext or other. On persistent requests of the complainant, the accused in discharge of his part legal liability, issued four cheques of ₹1 lakh each i.e. cheque bearing No.196840 dated 01.01.2003, cheque No.196839 dated 01.2.2002, cheque No.196838 dated 01.11.2002 and cheque No.196837 dated 01.10.2002 (cheque bearing No.196831 dated 01.04.2002 for a sum of ₹1 lakh in CRM No.A-1232-MA of 2014), which on presentation for encashment, were returned back dishonoured with the remarks 'Insufficient Funds'. Legal notices were served. When the amount was not paid, then the complaints were filed within time, respectively.

The complainant examined his Special Power of Attorney holder M.L.Bhardwaj as CW-1, Dinesh Kumar, Clerk, Indian Overseas Bank as CW-2 and Jagmohan Singh, Deputy Manager, Indusind Bank as

CW-3.

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. He further pleaded that he wanted to get his daughter admitted in Law Course in England as complainant had assured her admission. For getting her admitted, complainant had demanded ₹15 lakhs towards expenses of education and for that purpose, accused issued 15 post dated cheques in November 2000 as the cheque book itself has been got issued from the Indusind bank in the same month and year. Accused further pleaded that as per demand of the complainant, he also paid amounts of ₹50,000/- and ₹1 lakh in cash. Out of the said cheques, complainant managed to get one cheque no.196830 cleared, for which he had no right to do so. Accused also stated that cheque book issued to him was comprising 25 cheques, out of which, 10 remaining were also cleared of his account in the last month of 2000 or beginning of 2001 and as such, question of advancement of loan in April 2001 to him, does not arise. Accused also examined himself as DW-1 and DW-2 Amarjit Bhinder.

Learned JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 16.01.2013.

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.

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 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 as to when such a huge amount was advanced to the accused. No other particulars of any type have been mentioned in the complaints. No receipt or security document was got executed while lending such a huge amount 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***.

The perusal of the record shows that it is nowhere in the complaint that M.L.Bhardwaj was present at the time of loan transaction or he knew about loan transaction personally. Special Power of Attorney holder M.L.Bhardwaj was not knowing the facts of this loan transaction, therefore, he cannot deposed regarding the same. The complainant, who was knowing this transaction personally, has not come to the witness box to prove this fact and therefore, accused did not get opportunity to cross-examine the complainant regarding the loan transaction and his capacity to lend the amount and also to cross-examine on his defence and thus, prejudice has been caused to the accused. Statement of M.L.Bhardwaj cannot be relied upon regarding the facts which are not known to him personally.

It is settled law that the presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused 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 16.01.2013 passed by learned JMIC, Ludhiana, 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 11, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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