

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-778-MA of 2011 (O&M)

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Date of decision:18.8.2015

Mohindera Hire Purchase (Regd.)

...Applicant/Complainant

v.

Surinder Kumar

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naveen Sharma, Advocate for Mr. Vijay Lath, Advocate
the applicant.

Mr. Vijay Rana, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Surinder Kumar praying for the grant of leave to appeal against the judgment dated 30.11.2009 passed by learned Additional Sessions Judge, Jalandhar, vide which the appeal filed by the accused-Surinder Kumar against the judgment dated 6.8.2007 passed by learned Judicial Magistrate Ist Class, Jalandhar, by virtue of which the accused was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for four months for the offence under Section 138 of the

Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'), accepted the appeal and set aside the judgment of the learned JMIC, Jalandhar.

The applicant/complainant filed a complaint under Section 138 of the Act against respondent-Surinder Kumar in the Court of Judicial Magistrate Ist class, Jalandhar. Learned Judicial Magistrate Ist Class had served the accused-respondent with notice of accusation for the offence punishable under Section 138 of the Act. The learned trial Court has convicted the respondent for the offence punishable under Section 138 of the Act and sentenced him to undergo the sentence as mentioned above. The respondent/accused filed appeal before the learned Additional Sessions Judge, Jalandhar against the judgment dated 6.8.2007 passed by the learned Judicial Magistrate Ist Class, which was accepted by the learned Additional Sessions Judge, Jalandhar and acquitted the accused-respondent by setting aside the findings of conviction and the order of sentence. It is stated in the application that the applicant/complainant has very good case on merit and the grounds of the appeal may be read as part of this application. It has been prayed by the applicant that the application under Section 378(4) Cr.P.C. may be allowed and leave to file appeal be granted to the applicant/complainant and accompanying appeal filed by the complainant be taken on record.

The brief facts of the case are that M/s Mohindera Hire Purchase (Regd.) filed complaint against Surinder Kumar under Section 138 of the Act on the ground that the accused took financial assistance

from the complainant-firm for by getting Truck No.PNS-3023 financed and to discharge his said liability, the accused issued cheque No.359803 dated 11.12.2002 for ₹40,000/-, but when the said cheque was presented for encashment, it was dishonoured by the banker of the accused due to insufficiency of funds in his account. He was served with a legal notice but the amount was not paid, hence the complaint was filed.

The learned Judicial Magistrate Ist Class, Jalandhar, convicted and sentenced the accused under Section 138 of the Act after appreciating the evidence. The learned Additional Sessions Judge, Jalandhar, vide his judgment dated 30.11.2009 accepted the appeal and acquitted the accused.

Notice of motion was issued in this case. Mr. Vijay Rana, learned Advocate has put in appearance on behalf of the respondent and contested this application.

I have heard learned counsel for the parties and have gone through the record.

The only dispute between the parties is whether the legal notice was given within fifteen days after receiving the information about the dishonoured cheque from the bank or not. As per the case of the complainant, the memo had been received regarding dishonouring of the cheque on 28.12.2002 and the present complaint had been filed on 11.1.2003 i.e. within fifteen days. Whereas the case of the defence is that as per delivery book Ex.C.7 dishonoured cheque had been received by the complainant on 24.12.2002 and giving of legal notice on 11.1.2003 is

beyond 15 days time. The learned Appellate Court held that legal notice had been issued after fifteen days of time, therefore, the appeal was accepted and the accused was acquitted.

From the record, I find that the cheque Ex.C.1 is dated 11.12.2002 for ₹40,000/- issued in favour of the complainant. Ex.C.2 is the memo of dishonouring of the cheque and this memo is dated 12.12.2002. Ex.C.3 is a letter written by Senior Branch Manager to M/s Mohindera Hire Purchase (Regd.) regarding returning of the cheque. Ex.C.7 is the entry in the delivery register which is on 24.12.2002. The complainant himself got produced this register from PW-2. This delivery register, entry on which is Ex.C.7, shows that the cheque was delivered on 24.12.2002. This entry is also signed by the receiving person along with date.

At the time of arguments, learned counsel for the applicant argued that this entry Ex.C.7 is not bearing the signatures of the complainant but CW-2, which was produced by the complainant himself, nowhere says that this entry was not signed by the complainant or was signed by some one else. CW-2 has stated that he had brought the original delivery book, the true copy of the same is Ex.C.7. Rather, the defence objected to this document at that time on the mode of proof, but the complainant himself relied upon this entry Ex.C.7. This entry in the original delivery book shows that the cheque was returned on 24.12.2002. Otherwise also, there is no other document got produced by the complainant to show that the letter written by the Senior Branch Manager

sending the cheque on 28.12.2002 was actually sent on that day or delivered on that day. No dak register, postal register of entry or any other bank record had been proved to show that this memo along with the cheque was sent through this letter and this letter is also otherwise contradictory to the original delivery register.

Therefore, from the above, I find that the judgment passed by the learned Additional Sessions Judge, Jalandhar, is correct and as per law and has been passed after correctly appreciating the evidence in right perspective.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application seeking leave to appeal, the same is dismissed.

August 18, 2015.

(Inderjit Singh)
Judge

hsp