

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1057-MA of 2014 (O&M)

Date of decision: August 13, 2015

Saroj Bajaj

...Applicant

Versus

M/s Vishal Tools Industries and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Dhawan, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.20470 of 2014

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 41 days in filing the application seeking leave to appeal, is condoned

CRM No.A-1057-MA of 2014

Applicant-Saroj Bajaj has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Vishal Tools Industries and Ashok Jalota, challenging the impugned judgment dated 29.03.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar, whereby the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act was dismissed and accused-respondents were acquitted.

It is stated in the application that appeal is likely to

succeed on the grounds taken therein and the applicant have taken specific and cogent grounds to seek the setting aside of the judgment dated 29.03.2014.

The perusal of the record shows that applicant filed a complaint against M/s Vishal Tools Industries under Section 138 of the Negotiable Instruments Act. As per the case of the complainant, accused approached her through Deva Ram, husband of complainant, for taking personal loan of ₹1 lac for the business purpose and upon his request, complainant paid that amount to the accused and thereafter in order to discharge this liability, accused issued a cheque bearing No.033132 dated 24.12.2002 drawn on Punjab National Bank, Basti Danishmandan, Jalandhar. On presentation of the cheque, it was returned back dishonoured vide memo dated 07.01.2013 with remarks 'account closed'. Legal notice dated 04.02.2003 was served upon accused through registered post as well as UPC but accused No.1 despite making payment, has given vague reply dated 13.02.2003 and accused No.2 did not give any reply and the present complaint was filed. During the pendency of the complaint, an application under Section 319 Cr.P.C. was filed to summon Kamlesh Kumari wife of Ashok Jalota and also for framing charge under Section 420 IPC etc. The said application was allowed only to the extent regarding amendment of the charge under Section 420 IPC.

Learned JMIC, Jalandhar, after perusal of the evidence on record, acquitted the accused.

Aggrieved from the judgment passed by learned JMIC,

Jalandhar, present application for grant of leave to appeal has been filed.

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

The perusal of the record shows that in the reply M/s Vishal Tools Industries stated that they have no liability against the complainant as no person in the name of Ashok Jalota is its proprietor. Even having received the reply of legal notice from M/s Vishal Tools Industries, the complaint was filed by complainant against the firm also. During the arguments, it was admitted that Ashok Jalota is not proprietor nor partner of M/s Vishal Tools Industries. M/s Vishal Tools Industries was made a party as the account number given on the cheque CC14 is of the said industry, whereas the cheque book was issued for the account No.CC13, which is in the name of Kamlesh Kumari wife of Ashok Jalota.

From the evidence and especially from the statement of the bank official, it has come on the record that account No.CC14 has been mentioned in the cheque book by the bank official and not by accused Ashok Jalota. So, from the record, firstly, I find that M/s Vishal Tools Industries, is not concerned, in any way, in this case and the firm has been rightly acquitted. Otherwise also, M/s Vishal Tools Industries has been sued through Ashok Jalota and Ashok Jalota has nothing to do with that firm.

Learned Magistrate has discussed the ingredients of Section 138 of the Negotiable Instruments Act. As the cheque which

was signed by Ashok Jalota is not regarding his account, therefore, the complaint under Section 138 of the Negotiable Instruments Act is not maintainable.

Now, coming to the cheating by Ashok Jalota i.e. offence under Section 420 IPC, I find that there is nothing in the complaint that intention of Ashok Jalota was to cheat the complainant and with that intention he induced the complainant to give loan of ₹1 lac. As already discussed, the account No.CC14 has been mentioned by the negligence of the bank official while issuing the cheque book regarding account of Kamlesh Kumari, wife of Ashok Jalota. Therefore, Ashok Jalota has not done anything by writing wrong account number on the cheque.

Furthermore, the case of Ashok Jalota is that he is authorized signatory to the account of his wife Kamlesh Kumari. The record of the Bank was also summoned from the bank official, but the official deposed that this record being old one, has already been destroyed.

In view of the above discussion, I find that the findings given by learned JMJC, Jalandhar, are correct, as per law and do not require any interference from this Court.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

August 13, 2015
Vgulati

(INDERJIT SINGH)
JUDGE