

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.a-1501-MA of 2015 (O&M)
Date of decision: 08th December, 2015

M/s Shree Ram Raj Kumar Commission Agent

...Applicant

Versus

M/s Sant Baba Nikka Singh Overseas and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Parminder Singh, Advocate,
for the applicant-appellant.

INDERJIT SINGH, J.
Criminal Misc.No.28935 of 2015

This is an application for condonation of delay of 1252 days in filing the application, seeking leave to file appeal.

Heard. As the applicant-appellant wrongly filed the revision petition before the learned Addl. Sessions Judge and due to that, delay has occurred in filing the application for grant of leave to file appeal, therefore, the instant application is allowed. Delay of 1252 days in filing the said application is condoned.

Criminal Misc.No.a-1501-MA of 2015

Applicant has filed this application against respondents- under Section 378 (4) Cr.P.C. for grant of leave to file appeal against the judgment dated 18.01.2012, passed by the learned Judicial Magistrate Ist Class, Karnal, vide which respondent No.2-accused (hereinreferred as 'the accused') has been acquitted.

Brief facts of the case are that applicant-complainant is a registered firm under the Sales Tax and Central Tax Act and Raj Kumar is the partner of the said firm. Accused Pawan Dheer purchased paddy from the complainant firm to the tune of Rs.23,54,071.90, as fully described in the complaint. It has been further averred that out of the total amount, accused made the payment of Rs.17,71,000/- on various dates, as described in the complaint. It is also stated that to pay the balance amount of Rs.5,83,071/-, the accused issued four cheques bearing Nos.006480 to 006483 dated 11.09.2006, 12.09.2006, 13.09.2006 and 14.09.2006 for an amount of Rs.1,00,000/- each in favour of complainant. When the said cheques were presented for encashment, the same were received back unpaid with remarks 'payment stopped by the drawer'. Thereafter, legal notice was issued but the accused did not make the payment. Hence, the complainant filed complaint against respondents under Section 138 of the Negotiable Instruments Act.

On the basis of preliminary evidence produced by complainant, accused was summoned to face the trial.

The learned Court below, on the basis of evidence, acquitted the accused of the charge(s) framed against him, as stated above.

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

From the record especially from the impugned judgment, this Court finds that the findings returned by the learned Court below are correct as per evidence and law. From the perusal of the judgment, in no way, it can be held that the findings returned by the learned Court below are perverse or against the evidence. Nothing has been pointed out at the time of arguments as to which material evidence has not been considered and which material evidence has been misread by the Court. The version of the accused is that he has also made payments of Rs.6,50,000/- which has not been mentioned in the ledger Ex.P-26. The complainant has deposed that he has mentioned the payments in his complaint. Except the payments, mentioned in the complaint, he has not received any other payment from the accused. DW1 Manish, Officer, ICICI Bank, who had brought the account statement of accused firm, record of cheques bearing Nos.6451 and 6452 dated 01.08.2006 and cheque No.6453 dated 03.08.2006, amounting to Rs.1,00,000/- each, deposed that these cheques were self drawn and these were encashed by complainant M/s Shree Ram Raj Kumar Commission Agent. He also brought the record of cheque No.6459 for an amount of Rs.2,00,000/- and cheque No.6461 for an amount of Rs.1,50,000/-. No entry was found regarding these cheques in the ledger (Ex.P-26) nor there is anything mentioned in the complaint regarding any other transaction. The learned Court below also held that the cheques in question (Ex.C-1 to Ex.C-4) bear the signatures

of accused in blue ink pen whereas, the other contents on the body of these cheques were written with black ink pen. The Court also held that it substantiates the stand of the accused that the cheques in dispute were given to the complainant as a security and not in discharge of his legally enforceable debt or liability. The learned Court below has correctly appreciated the evidence and has reached to the conclusion that the presumption has been rebutted by the accused.

From the aforesaid discussion, this Court finds that the impugned judgment is correct and as per law and no ground is made out to grant leave to the applicant to file appeal.

Therefore, finding no merit in the instant application, the same is dismissed.

08th December, 2015
mamta

(INDERJIT SINGH)
JUDGE