

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-A No.744-MA of 2014 (O&M)
Date of decision: 07.04.2015

M/s Super Seeds Pvt. Ltd.

-----Applicant (s)

V/s

Shree Balaji Beej Bhandar & anr.

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment? **Yes**
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Ajay Jain, Advocate
for the applicant(s).

HARI PAL VERMA, J (Oral).

This is an application filed under Section 378(4) CrPC seeking permission to grant special leave to appeal against the order dated 15.1.2014 passed by Judicial Magistrate Ist Class, Hisar, whereby the accused-respondents have been acquitted of the charges under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act").

The complainant-firm through its authorized person had filed the present complaint under Section 138/147 of the Act for initiating criminal action against the respondents-accused on

the premises that respondent no.1-firm is having its business terms with the complainant whereas respondent no.2 is a proprietor of respondent no.1-firm. Respondent no.1 had purchased seeds from the complainant on credit basis and in discharge of its liability, respondent no.2, being the proprietor of respondent no.1-firm, issued a cheque bearing No.339341 dated 30.4.2009 for a sum of Rs.1,14,830/- drawn on Jind Central Cooperative Bank Limited, Branch Office Kharkhoda, Jind in favour of the applicant-complainant. However, the said cheque was dishonoured with the remarks "balance funds" vide bank return memo. dated 12.8.2009.

On the basis of preliminary evidence, as led by the complainant, the respondent no.2-accused was summoned for commission of an offence under Section 138 of the Act. While putting in appearance, the respondent-accused pleaded not guilty and claimed trial.

The complainant examined Rajesh Kumar as PW-1 and he tendered his affidavit Ex.PW-1/A and other documents Ex.P1 To Ex.P8 in support of his evidence, the details of which is as under:-

<i>"Ex.P1</i>	<i>resolution</i>
<i>Ex.P2 & P3</i>	<i>invoices/bills</i>
<i>Ex.P4</i>	<i>original cheque</i>
<i>Ex.P5</i>	<i>bank memo</i>
<i>Ex.P6</i>	<i>legal Notice</i>
<i>Ex.P7 & P8</i>	<i>postal receipts".</i>

In his statement under Section 313 CrPC, the respondent-accused denied the contents of the complaint being false and submitted that the witnesses have deposed falsely against him.

Considering the rival contentions of the parties, learned trial Court dismissed the complaint with the following observations:-

*“18. Though the invoices/bills have been produced by the complainant as Ex.P.2 and Ex.P.3 but it is the case of the complainant that the seeds were purchased by the accused on credit basis. If the seeds were purchased by the accused on credit basis, the complainant must have maintained some account qua this. But in the present case, the complainant has not produced any account statement allegedly of the accused. When the account statement has not been produced, a doubt has been created on the case of the complainant. The necessity to produce the account statement has been stressed upon by the Hon’ble Punjab & Haryana High Court in the judgment cited as **M/s Goodwill Hire Purchase Corporation Vs. Daljit Singh @ Jangi 2012 (2) LJR 374.***

19. In the present case, the business activities with the complainant have been admitted by the accused. The complainant has failed to produce the account statement. The address mentioned on the bills produced by the complainant does not match with the address mentioned in the head note of the complaint. So, the bills are also not reliable and hence, it cannot be ruled out that the cheque in question was only a

security cheque which has been misused, which is otherwise the stand of the accused.

20. For the reasons mentioned above, I am of the considered opinion that the complainant has failed to prove that there was legally enforceable liability outstanding against the accused. The evidence led by the complainant is defective in nature which cannot be relied upon. Hence, it is held that the presumption under section 139 of the Act has been rebutted from the material available on the file and the ingredients of the section 138 of the Act are not made out. Consequently, the present complaint is hereby dismissed. The accused are hereby acquitted of the offence under section 138 of the Act. Bail bond and surety bond stands discharged. File be consigned to record room.”

Learned counsel for the applicant-complainant submits that change of address has weighed the mind of the Court. He contended that invoices Ex.P2 and Ex.P3 are of the accused, but simply because the said invoices shows different addresses, the accused cannot be given the benefit of doubt about the genuineness of invoices Ex.P2 and Ex.P3.

I have heard learned counsel for the applicant.

The very basis on which the trial Court has dismissed the complaint is referred to in para 18 of the judgment, wherein it has been observed that the complainant has failed to establish any account qua the transaction entered between the complainant and the accused on credit basis. No such account statement has

been produced by the complainant and therefore, the very basis of the complaint is unfounded.

It is for the complainant to produce the statement of account wherein the transaction can be established between the complainant and the respondent-accused. But the complainant has miserably failed to establish any account qua the transaction entered between the complainant and the accused on credit basis. Moreover, the addresses mentioned on the bills produced by the complainant do not match with the address mentioned in the head note of the complaint, which raise doubt about their reliability. In this view of the matter, the complainant has failed to establish the transactions. Reliance may be placed on a judgment of Hon'ble the Apex Court in the case of **Ashok Kumar v. State of Rajasthan**, 1991(1) SCC 166, wherein it has been held that interference in an appeal against acquittal would be called for only if the judgment under appeal is perverse or is based on misreading of evidence.

Learned counsel for the applicant-complainant has failed to point out any misreading of evidence by the trial court. Contrary to it, the applicant-complainant himself has not produced any evidence which may reflect any transaction as entered between the complainant and the respondent-accused.

No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the applicant.

Thus, no interference is warranted in the impugned order. Accordingly, finding no merit in the contention of the learned counsel for the applicant, the prayer made in the present application under Section 378 (4) Cr.P.C. for special leave to appeal is declined. The application is dismissed.

Since the application for leave to appeal has been dismissed on merits, no further order is required to be passed in the application under section 5 of the Limitation Act for condonation of delay in filing appeal.

April 07, 2015
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(HARI PAL VERMA)
JUDGE