IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-981-MA of 2011 (O&M)
Date of decision: September 01, 2016

M/s Mahindra Traders

...Applicant

Versus

M/s Dahiya Beej Bhandar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Shrey Goel, Advocate for the applicant.

Mr.Arun Sharma, Advocate for the respondents.

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INDERJIT SINGH, J.

Applicant-M/s Mahindra Traders has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Dahiya Beej Bhandar and Shamsher Singh, challenging the impugned judgment dated 28.10.2010 passed by learned Judicial Magistrate Ist Class, Karnal, vide which the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that trial Court misread and misinterpreted the words 'accouint closed and limit closed'. The applicant shall suffer an irreparable loss if leave is not granted. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant M/s Mahindra Traders filed a complaint against accused M/s Dahiya Beej Bhandar through Shamsher Singh under Section 138 of the Negotiable Instruments Act. The brief facts of the complaint as noted down in the judgment passed by learned JMIC, Karnal, are as under:-

> *"2. Brief facts of the complainant's case are that the complainant firm is the sole proprietorship concern of Radhe Sham Rana and is dealing in the business of sale of pesticides etc. and the accused No.1 is the sole proprietorship concern of accused no.2 and it (accused firm; used to purchase pesticides from the complainant firm on credit basis). The cheque in dispute dated 20.01.2003 for a sum of Rs.1,30,000/- was issued by the accused in favour of complainant in discharge of its partial liability with an assurance that there was sufficient balance at this credit. However, the cheque in dispute, when presented for encashment, was received back unpaid with memo dated 23.01.2003 with the advice that the account, on which the same has been drawn, has already been closed. The proprietor of the complainant firm immediately contacted the accused no.2 and apprised him of the fact, who requested him to again present the cheque in the month of February, 2003. The cheque in dispute was accordingly again presented on 19.02.2003, but the same was again received back unpaid with memo dated 25.02.2003 with the advice of "Limit Closed". The unpaid cheque as well as cheque returning memo of the drawer bank was received by the complainant from its own bank on 03.03.2003. Since the accused has failed to make payment of the amount of the cheque in dispute within the stipulated time frame even after issuance of legal notice dated 12.03.2003; hence he is guilty of the offece punishable under Section 138 of the Negotiable Instruments Act."*

The accused denied the correctness of the evidence under Section 313 Cr.P.C. and pleaded false implication and innocence. Accused Shamsher Singh also pleaded that the cheque in dispute was issued blank securing payment of future transactions and the same has been misused by the complainant firm. He had already closed his account in the year 2000, on which the security cheque was drawn. As per his account, a sum of ₹3682/- only is payable by him to the complainant, which he is ready to pay.

Learned JMIC, Karnal, after appreciating the evidence, acquitted the accused-respondents.

Notice of motion was issued and learned counsel for the respondents appeared and contested the application.

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

Learned JMIC, Karnal, held that once the cheque was presented on 20.01.2003 and the same was received back unpaid with memo dated 23.01.2003 with the remarks that account has already been closed, therefore, the cheque cannot be presented for encashment second time on 19.02.2003. Learned Magistrate further held that though cheque can be presented many times in the validity period of the cheque but where the complainant came to know that account has already been closed, the cheque cannot be presented second time and has relied upon the law laid down in ***Nanjudappa vs. Hanumantharayappa, 2008(4) Civil Court Cases, 375*** and in ***S.L.Construction and another vs. Alapati Srinivasa Rao and another, 2009(1) RCR 218***.

Learned counsel for the applicant has not shown any law in rebuttal to the law cited by learned JMIC, Karnal. The fact that the cheque was presented second time on the oral assurance of the accused also looks improbable. When the account has already been closed, there was no question of giving assurance to present the cheque again. Either the account is to be again opened with new number or the account is to be get revived, if possible as per law.

Keeping in view the above discussion, I find that impugned judgment dated 28.10.2010 passed by learned JMIC, Karnal, is correct, as per law and evidence and does not require any interference from this Court.

No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

September 01, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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