

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-419-MA of 2013(O&M)
Date of decision: January 11, 2016

Jagtar Singh

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.H.S.Sullar, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-Jagtar Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Sunil Kumar, challenging the judgment dated 16.04.2013 passed by learned Judicial Magistrate Ist Class, Ambala, whereby accused-respondent was acquitted of the charges.

It is mainly stated in the application that accompanying appeal is filed which is likely to succeed on the grounds taken therein. It is further stated that learned trial Court has failed to appreciate the evidence in hand and has based the judgment of acquittal on conjectures and surmises. The settled law has been discarded making the impugned judgment liable to be set aside. It is also stated that signature on the cheques is an admitted fact. The existence of

firm at the time of issuance of cheque is also admitted. It is further stated that wheat purchasing has also been proved. It is, therefore, prayed that leave to appeal be granted to the applicant.

As per the record, the complainant Jagtar Singh filed a complaint against accused Sunil Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, he is a big landlord and is having big chunk of agricultural land while the accused is proprietor of firm known as M/s Panna Trading Company located at shop No.73 New Grain Market, Ambala City and deals in the business of Commission Agent. In the month of September 2008, accused purchased wheat for a sum of ₹5 lacs, which the accused further supplied at Delhi. Accused issued cheque bearing No.393337 dated 20.11.2008 for a sum of ₹2 lacs from the account in Punjab National Bank. When the complainant presented the said cheque on 21.11.2008 for encashment, it was dishonoured. It is further stated in the complaint that complainant again approached the accused and accused issued another cheque bearing No.397693 dated 20.12.2008 for a sum of ₹3 lacs and requested the complainant to present both the cheques for encashment in the last week of April and first week of May 2009. Thereafter, the complainant presented the cheques but the said cheques were returned unpaid with the remarks 'insufficient funds'. Legal notice was served. When the payment was not made, then the complaint was filed.

Learned JMJC, Ambala, vide impugned judgment dated 16.04.2013, after appreciating the evidence, acquitted the accused-

respondent.

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

From the record, I find that the accused took the defence that he has not purchased any wheat from the complainant nor he has received any legal notice. He further stated that witnesses are false and he is innocent and nothing is due towards the complainant. Jagtar Singh is having the shop of Fertilizer and medicines etc. and has good relations with the bank that is why he had given three security cheques for getting his loan passed from the bank and he never received legal notice. He opted to lead defence evidence and in his defence, he examined DW-1 Gurnam Singh, who stated that he has brought the summoned record of Sushil Trading Company and its account No. is 30136 and its proprietor is Sushil Kumar s/o Om Parkash. He has also brought the copy of Account opening form, affidavit attached with it, Ration card and PAN card, which are Ex.D1 to D4. During cross-examination, Gurnam Singh admitted correct that he has given his affidavit in evidence in case titled as 'Jagtar Singh vs. Sushil Kumar'. He also admitted that Sunil Kumar has no account in his bank and Ex.C1 and C2 have been seen by him, which have been admitted by proprietor of M/s Panna Trading Company and Sunil Kumar has no account in their bank. He admitted that cheques in question do not bear the signatures of Sushil Kumar. He also admitted that in Ex.D2 ration card of Sushil Kumar S/o Om Parkash, his address has been mentioned as H.No.217, Palika Vihar, Ambala City

and on Ex.D4, no address of Sushil Kumar has been mentioned. He further admitted that on Ex.D2 affidavit tendered by Sushil Kumar, his address has been mentioned as 1510/6 Old Anaz Mandi, Ambala City and the same is the address on Ex.D1 account opening form, which is Sushil Trading Company, Old Anaz Mandi, 1596/6, Ambala City. DW-2 accused himself also appeared in the witness box and deposed that he has seen Ex.C1 and C2, which he had given to the complainant signed in blank and date and amount of these have not been filled up in his handwriting nor these bear his initials under date and amount. He further stated that they are three brothers, he himself, second is Anil Kumar and third is Sushil Kumar and he has not received any legal notice. During cross-examination, he admitted that he is the proprietor of M/s Panna Trading Company, shop No.73, New Grain Market, Ambala City but now Panna Trading Company is not in existence.

The Court after discussing the evidence of the complainant as well as defence evidence, held that it is amply clear that accused Sunil Kumar is proprietor of M/s Panna Trading Company but perusal of Ex.C5 to C8 clearly reveals that the legal notice has been sent to Sushil Kumar s/o Om Parkash as proprietor of M/s Panna Trading Company. The Court further held that cheques in question have been signed by accused Sunil Kumar but CW-1 has clearly admitted in his testimony that legal notice has not been served to the accused Sunil Kumar, which clearly shows that mandatory ingredients of Section 138 of the Negotiable Instruments Act have not been complied with by the

complainant.

Keeping in view the above finding of the Court that one of the necessary ingredient of Section 138 of the Negotiable Instruments Act has not been complied with i.e. legal notice has not been given to Sunil Kumar accused, therefore, I find that learned Magistrate has rightly acquitted the accused. The findings given by learned JMIC, Ambala are correct and as per law. In no way, these findings can be held as illegal nor these can be held as perverse. Nothing has been argued as to which material evidence has not been considered or which material evidence has been misread by the Court below. The judgment dated 16.04.2013 passed by learned JMIC, Ambala, is correct, as per law and evidence and does 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.

January 11, 2016
Vgulati

(INDERJIT SINGH)
JUDGE