

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-868-MA of 2013

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Date of decision:16.5.2016

M/s Amrit Paper

...Applicant

v.

M/s Bharti International

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Munisha Gandhi, Advocate for the applicant.

Mr. Satish Jain, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against M/s Bharti International-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 3.4.2010 passed by learned Judicial Magistrate Ist Class, Chandigarh, whereby the complaint filed by the complainant/applicant for the offence under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed and the accused/respondent has been acquitted.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of

acquittal which is likely to succeed as per grounds mentioned therein. It has been further stated that the learned trial Court has erred in law in acquitting the accused/respondent on the non-existent technical ground. The learned trial Court has also mis-directed itself in accepting the argument of the accused that the legal notice issued by the complainant is defective. It has been prayed that the application may be allowed and in the interest of justice leave to file appeal may be granted against the judgment of acquittal.

From the record, I find that complainant-M/s Amrit Paper a Division of Amrit Banaspati Limited filed complaint against M/s Bharti International, House No.352, Phase-II, Ram Darbar, Chandigarh under Section 138 read with Section 142 of the NI Act. It has been mainly stated in the complaint that the complainant supplied the papers on good faith from time to time on credit basis to the accused company. The accused company issued a cheque bearing No.094167 dated 26.6.2000 for ₹2,50,000/- in favour of the complainant company. But on presentation in the bank for encashment, the said cheque was dishonoured with remarks “insufficient funds” vide memo dated 10.7.2000. Thereafter, a legal notice was issued and when the amount was not paid the complaint was filed well within time.

Notice of motion has been issued in this case.

Mr. Satish Jain, learned Advocate has put in appearance on behalf of the respondent and contested this criminal miscellaneous application.

I have heard learned counsel for the parties and have gone

through the record.

From the record, I find that the cheque in question is for an amount of ₹2,50,000/- whereas now in the legal notice a demand of ₹8,19,012/- has been made.

The learned Judicial Magistrate Ist Class, Chandigarh, after discussing the law held the notice defective. As the demand raised by the complainant in the legal notice is much more than the cheque amount and the complainant had again issued the legal notice regarding the other amounts which is due to the accused in the legal notice, therefore, excess amount had been asked in the legal notice to pay to the complainant. Therefore, as the law discussed by the learned Magistrate in the judgment itself this notice is defective and invalid. One of the necessary ingredients under Section 138 of the NI Act that a valid legal notice should have been given by the complainant well within time, but here the legal notice is defective and one of the ingredients under Section 138 of the NI Act has not been complied with.

Keeping in view the facts and circumstances of the present case, I find that the findings given by the Court below are correct as per evidence and law. The learned Magistrate has also discussed other points for acquittal of the respondent. A perusal of the judgment passed by the Court below shows that the evidence has been read in right perspective. No illegality has been committed by the Court below. In no way, the findings can be held as perverse. Nothing has been pointed out at the time of arguments as to which material evidence has been misread by the Court

below or which material evidence has not been considered by the Court.

Therefore, from the facts and circumstances of the present case, I do not find any ground to grant leave to file appeal. Consequently, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

May 16, 2016.

(Inderjit Singh)
Judge

hsp