

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1037-MA of 2014(O&M)
Date of decision: January 28, 2016

M/s Bawa Trading Company

...Applicant

Versus

M/s Mittal Soap Factory and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.K.Singal, Advocate
 for the applicant.

INDERJIT SINGH, J.

Applicant-M/s Bawa Trading Company has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Mittal Soap Factory and Amrit Pal Mittal, challenging the judgment dated 25.04.2014 passed by learned Judicial Magistrate Ist Class, Chandigarh, whereby accused-respondents were acquitted of the charges.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that the impugned judgment dated 25.04.2014 passed by learned trial Court is illegal, wrong, perverse, unsustainable and liable to be reversed. It is, therefore, prayed that leave to file the appeal be granted.

As per the record, the complainant M/s Bawa Trading

Company filed a complaint against accused M/s Mittal Soap Factory and Amrit Pal Mittal under Section 138 of the Negotiable Instruments Act, 1881. As per complainant's version, the accused purchased non-edible oil worth ₹4,00,000/- from it for manufacturing soap and in discharge of said liability, issued cheque bearing No.470356 dated 27.12.2007 for a sum of ₹1,50,000/- drawn at Oriental Bank of Commerce, which on presentation for encashment was returned with the remarks 'insufficient funds'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

After the complainant produced the evidence, the accused in the statement under Section 313 Cr.P.C. took the defence that he has not taken any material from the complainant. He further pleaded that dealings were with Swastik Enterprise to whom he had given blank cheque as security and the complainant procured said cheque from Swastik Enterprise and misused it.

Learned Judicial Magistrate 1st Class, Chandigarh, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 25.04.2014.

After hearing learned counsel for the applicant and after going through the record, I find that the perusal of the impugned judgment shows that the findings have been given as per evidence and law. In no way, the reasonings can be held as perverse. Even at the time of arguments, nothing has been argued as to how the findings given by learned Court below are perverse or against the law.

Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below.

The Court below held that accused had regular dealings with regard to purchase of non-edible oil with Swastik Enterprise as admitted by CW-1 and even had an occasion to give blank security cheque to Swastik Enterprise to be used by it in case of non-payment for the supply of edible oil made by it. It is further held that Swastik Enterprise is not a party in the present case. It being a concern of complainant's relative, the complainant had opportunity to cross-examine some official of Swastik Enterprise to disprove the defence raised by accused and to show accused had no business dealings with Swastik Enterprise.

The Court from the evidence held that the defence of the accused in the present case is probable, particularly in the scenario that complainant has totally failed to prove the supply of non-edible oil to accused through documentary evidence despite the fact that it maintained account books and balance sheet in regular course of its business.

I agree with the findings given by learned Magistrate. These findings are as per evidence and law. The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence and in the present case, the accused has raised probable defence and rebutted the presumption from the evidence of the complainant. The complainant is proprietorship firm

and it is maintaining the accounts. No account has been produced to show the supply of non-edible oil to the accused. There is no document on the record of any type to show that any non-edible oil has been supplied by the complainant to the accused.

In view of the above discussion, I find that the findings given by learned JMIC, Chandigarh, in no way, can be held as perverse. Rather, these have been given as per the law while appreciating the evidence in right perspective. The impugned judgment dated 25.04.2014 passed by learned JMIC, Chandigarh, 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 28, 2016
Vgulati

(INDERJIT SINGH)
JUDGE