

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM No.A-1328-MA of 2015 (O&M)****Date of decision: May 10, 2016**

M/s Lafarge Aggregates and Concrete India Private Limited
...Applicant

Versus

M/s Chandigarh Construction Company and another
...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Anand Chhibbar, Senior Advocate with
Mr.Vaibhav Sahni, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-M/s Lafarge Aggregates and Concrete India Private Limited has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Chandigarh Construction Company and Mr.Bhopesh Latta, challenging the impugned judgment dated 11.05.2015 passed by learned Judicial Magistrate Ist Class, Chandigarh.

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 also stated that if the application is not entertained that the appellant would suffer irreparable loss which could not be compensated later on. It is, therefore, prayed that leave to appeal be granted.

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

As per the record, the complainant M/s Lafarge Aggregates and Concrete India Private Limited filed a complaint against accused M/s Chandigarh Construction Company through its proprietor Bhopes Latta and Mr.Bhopes Latta under Section 138 of The Negotiable Instruments Act. As per complainant's version, it supplied ready mix concrete to accused company, which in discharge of its existing liability, issued cheque bearing No.722805 dated 11.06.2010 for a sum of ₹7,50,750/- drawn on State Bank of India, Barwala, Chandigarh, which on presentation for encashment, was returned back unpaid with the remarks 'Insufficient funds'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

The complainant examined CW-1 Brajesh Srivastava and CW-2 Balbir Kumar, accountant and closed its evidence. The accused examined DW-1 Pranav Kumar from Corporation Bank, Rudrapur, to prove that it transferred an amount of ₹7,50,750/- in account of complainant company on 14.06.2010 through RTGS whereupon it paid a fee of ₹56/- to bank as reflected in statement of account and RTGS documents Ex.DW1/A to Ex.DW1/C.

Learned JMIC, Chandigarh, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 11.05.2015.

Learned counsel for the applicant argued that when the

cheque was presented before the bank in the month of December 2010, at that time, the liability was existing against the present petitioner of ₹7,87,875/-, which is clear from the statement of account placed on record, which is Ex.C3 (Annexure A-5). Therefore, he argued that the cheque was issued for liability and presumption arose under Section 139 of the Negotiable Instruments Act against the accused.

After going through the statement of account, I find that it shows that the cheque was issued on 11.06.2010 for a sum of ₹7,50,750/-. As per the statement of account, after issuance of cheque in question on 11.06.2010, accused paid an amount of ₹7,50,750/- on 14.06.2010, which was the cheque amount. The statement of account further shows that by paying this amount through RTGS on 14.06.2010, there was no liability against the present accused. Rather, they paid ₹51,150/- in excess of the existing liability at that time on 14.06.2010. There is no document on the record to show that when the amount was paid through RTGS, at that time, liability was remained pending against the present accused. There is also no document on record to show that the cheque in question was issued for future transactions. The statement of account shows that amount was shown pending after 07.10.2010 for ₹7,87,875/- for the transaction which arose later on after the issuance of the cheque in question. The cheque in question was issued for existing liability at that time and that money was already paid by the accused through RTGS after three days of the issuance of the

cheque.

In view of the these facts, I find that the findings given by learned Magistrate are correct, as per evidence and law. In no way, the findings can be held as perverse i.e. against the evidence and 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.

In view of the above discussion, I find that the findings have been given by learned JMIC, Chandigarh, while appreciating the evidence in right perspective. The impugned judgment dated 11.05.2015 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.

May 10, 2016
Vgulati

(INDERJIT SINGH)
JUDGE