

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-597-MA of 2016 (O&M)

Date of decision: May 05, 2016

M/s Godrej & Boyce Mfg. Co. Limited

...Applicant

Versus

M/s National Sales Corporation and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Ahluwalia, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-M/s Godrej & Boyce Mfg. Co. Limited has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s National Sales Corporation and Vijay Kumar proprietor, challenging the impugned judgment dated 29.01.2016 passed by learned Judicial Magistrate Ist Class, Chandigarh, whereby 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, therefore, prayed that leave to appeal be granted.

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

From the record, I find that complainant M/s Godrej & Boyce Mfg. Co. Limited filed the complaint against M/s National Sales

Corporation and Vijay Kumar proprietor under Section 138 of the Negotiable Instruments Act. As per complainant's version, it supplied various office machines, equipments, furniture etc. to accused corporation against proper invoices, for payment of price of which accused issued cheque bearing No.492653 dated 30.06.2011 for ₹10,17,427.61/-, drawn on Punjab National Bank, which on presentation for encashment, was returned back unpaid with the remarks 'Insufficiency of funds'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

The complainant examined authorized representative as CW-1 and closed the evidence. On the other hand, the accused raised the defence that he was a wholesale dealer of complainant company, which had taken blank signed cheques in advance as security against the supply of material on credit against running statement of account. He further stated that defective products were supplied to him by complainant number of times and he returned material worth ₹8,65,480/- vide challan No.1743 Mark A and served a notice Ex.DA to the complainant for rendition of accounts, on the basis of which he later filed civil suit for rendition of accounts, plaint being Ex.DE. He submitted that the official of complainant company prepared dealer damage reports Ex.DF and official Yogesh Arora issued cheque worth ₹7,95,330/- on behalf of complainant, that got dishonoured. That, he served a notice under Section 138 of NI Act to complainant company, copy Ex.DG. That, his blank signed security

cheques have been filled and misused by complainant without any outstanding liability on his part. The accused also stated that he referred a complaint to SSP, Faridkot against complainant and also proved the reply Ex.DD given to the legal notice. The accused also examined DW-1 Raj Kumar Sethi, office of Punjab National Bank, wherein vide entry Mark A another cheque No.492685 of the accused, presented by the complainant for encashment has been reflected as dishonoured. Thereafter, accused also examined DW-2 Karan Malik, official from the CITI Bank, who produced the record regarding the same cheque and produced deposit slip and then accused closed the evidence.

Learned JMIC, Chandigarh, after appreciating the evidence in right perspective held that complainant has relied upon the invoices Ex.C3 to Ex.C10 to show the outstanding liability of accused qua cheque in question. The Court held that a bare perusal of invoices transpire that they are computer prints, which have not been signed even by any official/authority of the complainant company. They are neither the duplicate copies nor office copies of the original invoices issued to the accused. None of them contain accused's signature thereon as acknowledgment of goods received vide them. The sole witness of complainant CW-1 was time and again questioned to show any document which could prove that accused ordered certain goods and the same were supplied to him by complainant company, but CW-1 failed to produce any such document. Complainant has not produced any statement of account

reflecting the outstanding liability of accused. CW-1 deposed that the accused had signed the GC notes as acknowledgment of receipt of goods, but no such GC notes have been produced by the complainant. The Court also held that there is no evidence to corroborate the invoices Ex.C3 to Ex.C10.

In view of the above evidence produced by the accused as well as cross-examination of the complainant, the Court held that presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused. The Court further held that it is admitted case between parties that the accused was an officially appointed dealer of the complainant company. The Court held that possibility of giving of blank cheques as security cheques cannot be ruled out. The Court further held that in the cheque Ex.C11, the name of complainant company and the signature of accused are in blue ink and appears to have been written at same time by accused. The rest of the contents including date and amount in words and figures have been filled in black ink in different handwriting, which supports the accused's probable defence.

Further, another cheque was presented bearing No.492685 dated 29.06.2011 which was earlier dishonoured with remarks "amount in words and figures differs" but no complaint was filed regarding cheque and instead presented the cheque in question by putting the date on 30.06.2011, which is after one day. The Court held that accused has been successful in showing that the amount mentioned in the cheque in question by the complainant is not actually

due to his part. The Court further held that official of the complainant company prepared separate dealer damage reports from time to time. Accused has also proved that a cheque worth more than ₹7 lacs was issued by an employee Yogesh Arora of complainant company on account of damaged goods returned by accused to complainant company.

In view of the above discussion, I find that learned Magistrate has appreciated the evidence in right perspective. I find that 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.

Learned counsel for the applicant stated that now the applicant wants to produce additional evidence to prove its case regarding existing liability. At this stage, I find that applicant cannot produce the additional evidence and cannot start the trial denovo. All this evidence was in the knowledge of the complainant and its authorized representative was duly cross-examined and so many questions have been asked regarding these documents. Even cross-examination was deferred and the complainant's representative again came on another date for further cross-examination. Even on that day, he has not brought the record.

In view of the above discussion, I find that the findings have been given by learned JMJC, Chandigarh, while appreciating the

evidence in right perspective. The impugned judgment dated 29.01.2016 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 05, 2016
Vgulati

(INDERJIT SINGH)
JUDGE