

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1416-MA of 2014 (O&M)
Date of decision: March 03, 2016

M/s Raunak Ram Hem Raj

...Applicant

Versus

Sansar Agro Industries and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vaneet Soni, Advocate
for the applicant.

Mr.H.P.S.Ghuman, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-M/s Raunak Ram Hem Raj through its partner Sh.Param Pal Gupta has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Sansar Agro Industries through its proprietor Hari Singh and Hari Singh, challenging the impugned judgment dated 07.05.2014 passed by learned Sub Divisional Judicial Magistrate, Nabha, whereby the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that impugned judgment passed by learned SDJM, Nabha is not legally unsustainable inasmuch as the learned Court below had

completely ignored the evidence led by the applicant-firm, wherein, it has been categorically stated by CW-1 Parampal Gupta that he and Hemraj are partners of the applicant-firm and are carrying with the business of Commission Agent but still learned Court below came to the conclusion that no evidence or deposition has been made by the appellant-firm or its witnesses so as to prove on record the existence of the partnership firm and its partners. It is also stated no specific pleadings are required in the criminal cases but still in the present case, the applicant-firm had proved on record the existence of partnership firm. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued and learned counsel for the respondent appeared and contested the application.

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

As per the record, the complainant M/s Raunak Ram Hem Raj filed a complaint against accused Sansar Agro Industries through its proprietor Hari Singh and Hari Singh under Section 138 of the Negotiable Instruments Act, 1881. As per complainant's version, in the month of October 2009, the accused took a cash loan of ₹2,50,000/- from the complainant and in order to discharge his aforesaid liability, issued cheque bearing No.692590 dated 22.10.2009 for a sum of ₹2,50,000/- in favour of complainant, 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 limitation.

Learned SDJM, Nabha, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 07.05.2014 and held that though the complaint has been filed by M/s Raunak Ram Hem Raj through its partner but in the body of the complaint, there is not even a single averment regarding existence of firm M/s Raunak Ram Hem Raj and regarding its partner. Even during the evidence, nothing has been deposed in this regard by the complainant. The Court held that no partnership deed has been placed on record nor Form-A and Form-C have been placed on file. Even no authority letter has been placed on record to show the authorization for filing the complaint. The Court after discussing the law on this point held that the complaint by a firm can only be filed through one of its duly authorized partner or its duly authorized officer.

Furthermore, from the perusal of the record, I find that the loan was given by the firm to another firm but no document has been produced on the record to show the loan transaction. Even, it has not been mentioned as to on which date the loan was given. The loan transaction in question was not made by negotiable instrument i.e. through cheque etc. No account books of the complainant-firm have been produced to show that the amount in question has been given to another firm.

The findings given by learned Magistrate, are correct as per evidence and law. There is nothing on the record to show that 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.

Learned counsel for the complainant has also filed application for leading additional evidence but the perusal of the complaint itself shows that there are no averments in the complaint that complainant-firm is a registered firm.

In view of the above discussion, I find that the findings given by learned SDJM, Nabha, in no way, can be held as perverse. The findings have been given after appreciating the evidence in right perspective. The impugned judgment dated 07.05.2014 passed by learned SDJM, Nabha, 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.

March 03, 2016
Vgulati

(INDERJIT SINGH)
JUDGE