

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1570-MA of 2014 (O&M)
Date of decision: February 15, 2016

M/s Arjan Engineering Corporation

...Applicant

Versus

G.S.Saini (Prop) M/s Leela Electronics

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rohit Sud, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.30277 of 2014

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 944 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-1570-MA of 2014

Applicant-M/s Arjan Engineering Corporation has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent G.S.Saini (Prop) M/s Leela Electronics, challenging the impugned judgment dated 04.07.2012 passed by learned Judicial Magistrate Ist Class, Jalandhar, whereby the accused-respondent was 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 judgment of acquittal of the accused-respondent under Section 138 of the Negotiable Instruments Act has caused grave miscarriage of justice. It is, therefore, prayed that leave to file 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 Arjan Engineering Corporation filed a complaint against accused G.S.Saini (Prop) M/s Leela Electronics under Section 138 of the Negotiable Instruments Act. As per complainant's version, complainant is a partnership concern under the name and style of M/s Arjan Engineering Corporation and Ajit Kumar is its partner. The complainant supplied goods to the accused firm M/s Leela Electronics, Ludhiana and in discharge of his part liability, accused G.S.Saini, being proprietor of M/s Leela Electronics, issued cheque bearing No.501137 dated 20.02.2005 for a sum of ₹50,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'Insufficient Funds'. Legal notice was served upon the accused. When the payment was not made, then the complaint was filed.

After appreciating the evidence, learned Judicial Magistrate Ist Class, Jalandhar, acquitted the accused-respondent vide impugned judgment dated 04.07.2012.

The perusal of the record shows that plea of the accused is that he had not issued cheque in question in order to discharge any

of his legal liability. In fact, the complainant firm has forged and fabricated cheque in question by making the addition and alteration. No amount is payable by him to the complainant firm. The cheque in question was lying blank with the complainant as security and the complainant has misused the same.

Learned Court below after appreciating the evidence held that the complainant has proved on record original invoices and declaration issued by the complainant firm. None of the witnesses examined by the complainant has proved on the record the original debit voucher alleged to be issued by the State Bank of India. No material document has been placed on record to show that legal notice was sent to the accused within prescribed time under Section 138 of the Negotiable Instruments Act. The documentary evidence on record reveal that memo regarding dishonouring of cheque was issued on 11.07.2005, which is Ex.C2 whereas notice of demand was issued to the accused on 17.08.2005, which is clearly beyond the period of limitation. The Court held that it was imperative on the part of the complainant to prove that the factum of dishonour of cheque was intimated to the complainant by his bankers State Bank of India through debit voucher advices dated 19.07.2005, which have neither been proved or placed on record nor any effort has been made by the complainant to examine the concerned bank official to prove the above-said document dated 19.07.2005.

Learned Magistrate held that as the notice has not been served within 30 days, therefore, one of the mandatory ingredient is

missing. It is also in the impugned judgment that when the case was fixed for orders, an application under Section 311 Cr.P.C. was moved, which was dismissed by the Court. Even when the accompanying appeal along with the application has been filed, no such application under Section 391 Cr.P.C. for leading additional evidence has been filed. As the complainant failed to prove that debit voucher invoice showing that he has received the memo on 19.07.2005, therefore, the Court has correctly held that the memo is dated 11.07.2005. It was for the complainant to prove that memo was received later on and further the legal notice issued by the complainant is within time.

In view of the above discussion, I find that the findings given by learned JMIC, Jalandhar, are correct, as per evidence and law. In no way, the findings given by learned Court below, can be held as perverse. The impugned judgment dated 04.07.2012 passed by learned JMIC, Jalandhar, 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.

February 15, 2016
Vgulati

(INDERJIT SINGH)
JUDGE