IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-262-MA of 2015 (O&M)
Date of decision: May 24, 2016

M/s Jai Bala Ji Construction Company

...Applicant

Versus

M/s P.V.R. Builders Pvt. Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Munish Puri, Advocate
for the applicant.

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<u>INDERJIT SINGH, J.</u>

Applicant-M/s Jai Bala Ji Construction Company has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against M/s P.V.R. Builders Pvt. Limited and other respondents, challenging the impugned judgment dated 26.11.2014 passed by learned Addl. Chief Judicial Magistrate, Pathankot, 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 further stated that applicant has a very good case on merit and if the leave is not granted, he would suffer irreparable loss. 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 Jai Bala Ji Construction Company filed a complaint against accused M/s P.V.R. Builders Pvt. Limited, Vaneet Kumar Bandari, Director/MD and Ram Kishan Saini, Director/MD under Section 138 of the Negotiable Instruments Act. As per the complainant's version, in discharge of their liability towards the complainant, accused No.2 and 3 on behalf of accused No.1 issued cheques bearing No.074672 dated 16.09.2012 for ₹3,30,000/-, 585645 dated 06.10.2010 for ₹2,50,000/- and 585646 dated 06.10.2010 for ₹2,23,400/-, which on presentation for encashment, were returned back unpaid with the remarks 'funds insufficient'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

The accused have taken the defence that complainant obtained blank cheques from the accused as security as costly machines were hired by the accused from the complainant.

Learned ACJM, Pathankot, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 26.11.2014.

I find that findings given by learned Court below in the impugned judgment dated 26.11.2014 are correct, as per evidence and law. Learned ACJM, Pathankot, has appreciated the evidence in right perspective. 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 Magistrate discussed the cross-examination of CW-1 Rajiv Kumar, in which he deposed that he is maintaining two books of account and he has produced only those documents in which payments have been accounted and TDS has been deducted by the payer and in respect of other account book, the same is maintained where no TDS is deducted by the payer. He also deposed that statement of account, which was brought by him is his personal book and same was never produced either before the income tax authority or the sales tax authority and entire transaction between him and the accused has not been even reflected in his income tax or sale tax returns as the same is maintained by him in the second account book. He further deposed that he has maintained account of the accused and he has mentioned rent on it and this time it is for the rent purposes and not for other purpose. Though, he has also deposed that operator, who was operating the machine was being paid salary at the rate of ₹10,000/- per month from 01.02.2009 till 01.06.2010 but he has not reflected the salary in the present account book. He admitted that there is an entry of PVR Builders, Gaggal and on page No.12, there is an entry of M/s RPBR Builders Limited, Gaggal. He further admitted that at page No.12, account shown to be maintained is incorrect and even the address of the party is also incorrect. CW-1 Rajiv Kumar also deposed that fact regarding wrong entry of Gaggal instead of Chandigarh is in his knowledge from the very beginning and mistake has been made by his accountant, but he has not made any effort to rectify the mistake. He further admitted in his cross-examination that at page No.16 of the ledger, there is an account maintained in the name of PNR Builders and the rent entry starts from 1.09.2009 at the rate of ₹1,90,000/- and the purpose of this entry was of rent and not for any other purpose. He deposed that he does not even know the name of the partners of the firm M/s PNR Builders nor about their address.

The above discussion by learned Magistrate in detail regarding the cross-examination and account books brought by the complainant and further, finding the payment of ₹18,97,970/- in the income tax return and further contradictions made by the complainant that he has not received any amount and all the entries contained in the account book do not relate to the accused etc., shows that defence raised by the accused looks probable. The statement of the complainant that account book shows receiving of ₹26,72,688/-, but the complainant states that it was not actually received etc. shows that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted and the defence version of the accused is probable. As the machine of high value has been given on lease, so the complainant might have received the blank security cheques.

In view of the above discussion, I find that the findings have been given by learned ACJM, Pathankot, while appreciating the evidence in right perspective. The impugned judgment dated 26.11.2014 passed by learned ACJM, Pathankot, 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 for grant of leave to appeal and therefore, the present application stands dismissed.

May 24, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**