IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.9770 of 2015 in/and
CRM No.A-470-MA of 2015
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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INDERJIT SINGH, J.

CRM No.9770 of 2015

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 28 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-470-MA of 2015

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 30.10.2014 passed by learned Chief Judicial Magistrate, Pathankot, whereby the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is

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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 Bhandari, Director/MD and Ram Kishan Saini, Director/MD under Section 138 of the Negotiable Instruments Act. As per the complainant's version, accused No.1 being a construction company, hired L&T Pokland (machine) of complainant and used the same at Jal Shakti Protject, Dharmala, District Chamba (HP) from February 2009 to June 2010 at a monthly rent of ₹1,90,000/- per month inclusive of machine operator and maintenance charges. Accused No.2 and 3 are Director/Managing Director of accused No.1, and to discharge the liabilities, issued a cheque bearing No.074671 dated 28.03.2010 amounting to ₹7,72,728/-, 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 accused have taken the defence that complainant had already received the blank signed cheque from them and has fraudulently filled the cheque without their knowledge and consent and no such amount is due and due to which reason, the said amount has not been shown by the accused in the income tax returns and the statement of account and they never received notice Ex.C3 and the complaint is false and baseless.

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Learned CJM, Pathankot, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 30.10.2014.

I find that findings given by learned Court below in the impugned judgment dated 30.10.2014 are correct, as per evidence and law. Learned CJM, 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 held that during cross-examination complainant admitted receiving of ₹26,72,888/-, which was shown by him in his income tax return and as per the allegations, the complainant has given the machine on a monthly rent of ₹1,90,000/- to the accused and accused used the said machine for 15 months and roughly total bill comes to about ₹30,00,000/- and the complainant admittedly received the major portion of the due outstanding amount of said bill. Therefore, there is no occasion for the accused to issue four cheques amounting to near about ₹15,76,128/-. The complainant during cross-examination also admitted that other complaints regarding the cheques amounting to ₹3,30,000/-, ₹2,50,000/- and ₹2,23,400/- are pending in the Court. Moreover, the complainant asked to produce his account books and he produced the ledger only showing over-writing and wrong entries in the said ledger. The complainant himself admitted in cross-examination that all the cutting and entries of similar nature in all the account books, but he claimed that the accountant is responsible for the said wrong entries and he did not disclose the address of the accountant namely Mukesh.

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The record, the complainant which was got produced, does not support complainant's version. It is admitted by the complainant himself that entries in the account books etc. are not correct. He put the liability on the accountant, but he is a income tax payee and supposed to keep the record and whatever record he is maintaining, that has not supported his version. The complainant admitted that there is an entry regarding receipt of ₹26,72,888/-, but he stated that actually, he has not received this amount and this version cannot be believed.

The Court below held that defence version raised by 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 CJM, Pathankot, while appreciating the evidence in right perspective. The impugned judgment dated 30.10.2014 passed by learned CJM, 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**

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