

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-67-MA of 2015 (O&M)
Date of decision: February 09, 2016

Mahindra and Mahindra Ltd.

...Applicant

Versus

M/s Jadhav Tractors and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Mehandiratta, Advocate
for the applicant.

Mr.Pankaj Jain, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Mahindra and Mahindra Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Jadhav Tractors and Srikant Jadhav, challenging the impugned judgment dated 16.12.2013 passed by learned Judicial Magistrate Ist Class, SAS Nagar, Mohali, 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 it would be in the interest of justice that leave to appeal be granted and the appeal be heard on merits.

Notice of motion was issued and learned counsel for the

respondents 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 Mahindra and Mahindra Ltd. filed a complaint against accused M/s Jadhav Tractors and Srikant Jadhav, sole proprietor under Section 138 of the Negotiable Instruments Act, 1881. As per complainant's version, the cheque in question was issued by the accused in favour of Punjab Tractors Ltd. on 10.01.2009. Subsequently, Punjab Tractor Ltd. got amalgamated with the complainant. It is also stated that a credit account was opened with Punjab Tractor Limited by accused No.2 in the name of accused No.1 and Swaraj Tractors. Spare parts were purchased from Punjab Tractor Ltd. on credit from time to time. The accused however, failed to pay the dues of Punjab Tractors Ltd. Ultimately, the accused issued cheque bearing 0248569 dated 10.01.2009 drawn on Union Bank of India, Mehsana, Gujarat Branch for ₹48,50,000/-, which on presentation for encashment, was dishonoured. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed.

Learned JMIC, SAS Nagar Mohali, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 16.12.2013.

The perusal of the findings given in the impugned judgment shows that these findings cannot be held as perverse. The findings have been given as per evidence and law. Nothing has been

argued as to how the findings given by the 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. In the statement under Section 313 Cr.P.C., accused No.2 has taken the probable defence that cheque in question was not issued on 10.01.2009 but was one of the blank cheques issued as security in favour of the Punjab Tractors Limited in the year 2001. The account on which the cheques were issued, was closed in the year 2006 and the cheque in question was not issued against any existing debt or legal liability but it was given merely as a security cheque.

The Court below after discussing the evidence held that the cheque in question is Ex.C2/A and bare look at the cheque makes it obvious that the writing 'Punjab Tractors Limited' against the printed words 'Pay to' is in different ink and handwriting, than the other part of the cheque i.e. the date, amount of the cheque in words and figures. It, therefore, lends credence on the version of the accused that this cheque when issued was only a blank cheque. DW-2 N.J.Acharya, who was an accounts officer with the accused from the year 1992-2008 has testified that a letter dated 28.12.2001 Ex.D2 was written by the accused to the Punjab Tractors Limited through which blank cheques No.0248567 to 0248570 were forwarded to PTL as security cheques. The cheque in question was therefore, one of the cheques forwarded to Punjab Tractors Limited in the year 2001. The photocopy of that letter is Ex.D2 on the record and it bears the date

28.12.01 and is addressed to Punjab Tractors Limited.

DW-1 Shubharth Bhardwaj is the official of Union Bank of India, Mehsana Branch. He has testified that the Bank Account No.75009 of the accused was opened in the year 1999 and cheque book bearing No.0248501 to 0248600 was issued in the year 2001-02 and the account was closed on 06.02.2006.

The Court below after discussing the statements of DW-1 and DW-2, contents of Ex.D2 and difference of ink of various entries on the cheque held that cheque in question was not issued on 10.01.2009 but was issued in the year 2001. Learned Magistrate further held that the complainant has not placed on record the terms and conditions of the agreement between the accused and Punjab Tractors Limited in relation to business transactions between them. No material has been placed on record as to what was the liability of the accused in the year 2001 towards PTL.

The perusal of the record shows that no particulars of pre-existing liability of the accused has been given. No document of any type has been placed on record. The probable defence raised by the accused has been duly supported and corroborated by the evidence. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

In view of the above discussion, I find that the findings given by learned JMIC, SAS Nagar Mohali, in no way, can be held as perverse. The impugned judgment dated 16.12.2013 passed by learned JMIC, SAS Nagar, Mohali, 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 09, 2016
Vgulati

(INDERJIT SINGH)
JUDGE