

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.15629 of 2015 in/and
CRM No.A-826-MA of 2015 (O&M)
Date of decision: July 29, 2016**

Daffodil Software Limited

...Applicant

Versus

Himanshu Pant

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sumit Gupta, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.15629 of 2015

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 2 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-826-MA of 2015

Applicant-Daffodil Software Limited has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Himanshu Pant, challenging the impugned judgment dated 02.02.2015 passed by learned Judicial Magistrate Ist Class, Hisar, vide which the accused-respondent was 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 impugned judgment passed by learned JMIC, Hisar, suffers from illegality and irregularity and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Daffodil Software Company filed a complaint against accused Himanshu Pant under Section 138 of the Negotiable Instruments Act. The brief facts of the case as noted down in the judgment dated 02.02.2015 passed by learned JMIC, Hisar are as under:-

“2. Brief facts of the instant complaint, as averred by the complainant, are that the complainant company is engaged in building unique state-of-art software products as well as software development tools which have universal applicability all over the world. It has been further averred that the complainant company periodically employs qualified software professionals as Trainees and provides them with extensive on-the-job training to enhance their knowledge, skills and performance and to enable them to independently carry out the software development tasks assigned to them by the complainant company in due course of time. It has been further contended that in the month of March, 2010, the accused has offered to render his services to the complainant company as ‘Assistant Software Engineer- Trainee’ under the terms and conditions laid down in the service agreement dated 06.04.2010, duly signed and executed by the accused along with letter of Training-cum-Placement dated 30.03.2010 duly accepted by the accused. The accused commenced his employment with the complainant company on 02.04.2010 and under clause 1.2, read together with clause 2.1, of the agreement the accused had promised to render his services to the complainant company for a minimum contractual period of one year and six months and had undertaken not to bring his employment with the complainant company to an end before completion of minimum contractual period and in case he brought his employment with the complainant company to an end, he would be deemed to have committed breach of contract and his unapproved absence and absence from office/ duties for over seven days without obtaining permission in writing for the same from the reporting officer, would also constitute breach of contract. Under clause 4.2 of the agreement, the accused has expressly promised and agreed to pay to the complainant company, a compensation including but not limited to the liquidated damages amounting to Rs.1,50,000/- to cover the costs, expenses and business losses incurred by the complainant company, on training of the accused, re-work required to be done on the assignment/ task left unfinished by

the accused, resulting delay in implementation of the concerned assignment, and obtaining suitable replacement of the accused, as specified in clause 2.3 of the agreement. It has been further averred that in pursuance of his having agreed to pay aforesaid compensation to the complainant company in the event of his committing breach of contract, had given to the complainant company a cheque bearing No.561931 for a sum of Rs.1,50,000/-, drawn on ICICI Bank Ltd., Sector 54, Suncity Gurgaon, with a clear understanding that in case the accused committed a breach of contract, the said cheque may be encashed by the complainant company, without giving any prior notice to the accused.

It has been further averred that the accused was contractually obligated not to bring his employment with the complainant company to an end before completion of minimum contractual period which runs until 01.10.2011 but the accused had absented himself from his duties without approval on 09.11.2010, remained on unapproved absence for a period of one and half month, and thereafter, never reported back to resume his duties at the complainant company's office during that period, and thus, he ended his employment before completion of MCP. The accused committed a breach of contract on 16.11.2010, after having remained on unapproved absence for more than seven days w.e.f. 09.11.201 and continued to breach the contract on each passing day thereafter by failing to report back for duties and finally, he terminated his employment without completing the MCP and rendered himself liable for the payment of his contractual liability of Rs.1,50,000/-. It has been further submitted that on 23.12.2010, the complainant company in accordance with the terms of agreement, deposited the aforesaid cheque bearing No.561931 in account of company held at State Bank of India, Main Branch, Hisar, for encashment, but got dishonoured from the Drawer's bank with the remarks "insufficient funds" vide bank return memo dated 24.12.2010 and the drawer failed to make the due payment within the stipulated period of 15 days, despite receipt of legal notice dated 19.01.2011. Hence, the present complaint."

Learned JMIC, Hisar, after appreciating the evidence on record, acquitted the accused-respondent vide impugned judgment dated 02.02.2015.

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

I have gone through the judgment passed by learned Court

below, which is correct, as per evidence and law. The evidence has been appreciated in right perspective. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out at the time of arguments as to how the findings are perverse and what illegality has been committed by the Court below.

Learned trial Court held that in the month of March 2010, the accused has offered to render his services to the complainant company as "Assistant Software Engineer-Trainee" under the terms and conditions laid down in the service agreement dated 06.04.2010 Ex.P.9. The accused also signed the letter of Training-cum-Placement dated 30.03.2010. The agreement dated 06.04.2010 is not disputed. The letter of Training-cum-Placement Ex.P8, joining report Ex.P10 etc. are admitted facts. The Court held that perusal of the document Ex.P17, on page No.23 and 24 shows that accused absented himself from the employment which amounts to breach of contract between the parties. Thereafter, he was removed from service. The trial Court further held that as per agreement, the accused joined the company on 02.04.2010 and the agreement was executed on 06.04.2010. As per point 4.2 of the agreement, it has been mentioned that in case of breach of contract committed by the accused, in that eventuality, the complainant was at liberty to terminate the employment without giving notice or salary in lieu thereof. The accused expressly promised and agreed to pay the compensation including but not limited to the liquidated damages amounting to ₹1,50,000/- to cover the costs, expenses and business losses incurred by the complainant company, on account of breach of contract. As

accused deposited the cheque in question bearing No.561931 drawn on ICICI Bank Ltd. in favour of the complainant in sum of ₹1,50,000/-. The Court held that the accused joined the company on 02.04.2010 whereas service agreement was executed on 6.4.2010. Perusal of the service agreement Ex.P.9, shows that cheque in question was taken by the complainant from the accused before the execution of service agreement. At the time of execution of cheque in question Ex.P.6, there was no subsisting liability outstanding against the accused. Therefore, the Court below held that at the time of drawing of the cheque, there was no existing liability against the accused.

At the time of arguments, nothing has been argued as to how the findings are perverse or against the evidence and law. The perusal of the findings shows that these have been given after appreciating the evidence in right perspective.

Keeping in view the above discussion, I find that impugned judgment dated 02.02.2015 passed by learned JMIC, Hisar, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

July 29, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No