

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

CRM No.A-881-MA of 2014 (O&M)

Date of decision: December 06, 2016

M/s Garg Radios

...Applicant

Versus

M/s Tapaite India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Tribhawan Singla, Advocate
for the applicant.

Mr.Amit Aggarwal, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-M/s Garg Radios through its Director Rajesh Kathuria has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Tapaite India and Ashwani Kumar, challenging the impugned judgment dated 15.03.2014 passed by learned Judicial Magistrate Ist Class, Barnala, vide which 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 learned trial Court acquitted the respondents on surmises and conjectures without appreciating the evidence brought on record by the

appellant and there are lot of discrepancies in the judgment passed by the

trial Court. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant M/s Garg Radios filed a complaint against accused M/s Tapaite India and Ashwani Kumar under Section 138 of the Negotiable Instruments Act. As per complainant's version, the accused have been purchasing goods from complainant firm on the credit basis and have been making payments from time to time and has also been taking money through bank cheques and demand drafts from the complainant firm for business purposes. Entries pertaining to said transactions were made in the account books which are regularly maintained by the complainant firm. After adjusting the said amounts, an amount of ₹11,72,947.55 is still due and outstanding against the accused. To discharge this liability, the accused issued cheque bearing No.619517 dated 25.11.2008 amounting to ₹11,72,947/- in favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Stop Payment'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The accused in the statement under Section 313 Cr.P.C., stated that he never issued any cheque in question in favour of the complainant. Rather, the accused lost his cheque book on 03.04.2007 at Mohali and the book contained cheques No.619517 to 619522 of ICICI Bank and he also got lodged FIR at Phase-8, Police Station Mohali, pertaining to said lost cheques. He also reported to his bank for stopping the payment of said cheques. The accused further stated that he does not know how the said cheques fell in the possession of the complainant.

In defence, accused examined DW-1 Head Constable Ranjit

Singh, who proved the copy of FIR Ex.DX1, which was registered on the

statement of the accused. The accused also examined DW-2 Yash Malik, Accounts Officer, PNB Barnala, who testified that the complainant Surinder Mohan withdrew ₹49,000/- out of the account of accused through cheque bearing No.405025, attested copy of which is Ex.DW2/A. He further testified that on 20.12.2006, Shelly Garg withdrew ₹50,000/- through cheque bearing No.405093 out of the account of the accused, attested copy of which is Ex.DW2/B.

Learned JMIC, Barnala, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 15.03.2014.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

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.

At the time of arguments, 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 as to how the findings are perverse or against the law and what illegality has been committed by learned Court below. The findings have been given by learned Court below while appreciating the evidence in right perspective.

The cheques are bearing signatures of the accused, therefore, presumption arises against the accused but this presumption is rebuttable from the evidence of the complainant itself or by leading defence evidence

been lost by him and he got registered the FIR in Police Station Phase 8 on 03.04.2007 regarding cheques bearing No.619517 to 619522. This FIR has been duly proved on the record. The FIR is dated 03.04.2007 whereas the cheque in question is dated 25.11.2008. Therefore, this registration of the FIR supports and corroborates the defence version.

Further, I find that copy of the account ledger inquiry has been placed on record as Ex.P7, which shows that payment of cheques bearing No.619517 to 619522 was stopped, which further supports and corroborates the version of the accused that he got stopped the payment of these cheques. The mere fact that written application is not given to the bank, has not been proved and will not falsify the defence version. Rather, Ex.P7 shows that the cheque bearing No.619514 has been passed and cheque No.619515 has also been passed, which means that earlier cheques have been encashed. But the cheques, which the accused says, that he has lost and FIR has been registered, have been stopped and no payment has been made out of the lost cheques. In view of the above discussion, I find that the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

Furthermore, the accused has also examined DW-2 Yash Malik, who has proved that the complainant has withdrawn ₹49,000/- from the account of the accused, which amount has not been accounted for by the complainant. The defence evidence and evidence of the complainant shows that the defence version is probable. Therefore, presumption under Section 139 of the Negotiable Instruments Act has been rebutted.

In view of the above discussion, I find that the impugned judgment dated 15.03.2014 passed by learned JMIC, Barnala, is correct, as

No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

December 06, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No