

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

CRM No.A-100-MA of 2016 (O&M)

Date of decision: September 07, 2017

M/s M.G. Credits and another

...Applicants

Versus

Kiran Sareen

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Dhawan, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicants-M/s M.G. Credits and Rakesh Kumar have filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Kiran Sareen, challenging the impugned judgment dated 16.11.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainants M/s M.G. Credits through its partner Rakesh Kumar and Rakesh Kumar filed a complaint against accused Kiran Sareen under Sections 138 and 142 of the Negotiable Instruments Act. As per complainants' version, complainant firm is a

partnership firm duly incorporated under the provisions of law and Rakesh

Kumar is the partner of the said firm. As per the record maintained by the complainant firm, a huge amount is outstanding towards the accused. As per the account statement for the year ending 31.03.2012, the outstanding amount towards the accused is ₹3,30,000/- and for the year ending 31.03.2013, the same is ₹26,75,000/-. The complainant approached the accused number of times and demanded the outstanding amount. A settlement was reached between the parties in presence of respectables on 05.04.2013 and the accused in order to discharge his lawful liability issued an account payee cheque bearing no.070074 dated 05.07.2013 for ₹26,75,000/-, which on presentation for encashment was returned back dishonoured with the remarks 'Opening Balance Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In the statement under Section 313 Cr.P.C., the accused took the plea that his firm M/s Broadways Credit and Investment deals in immigration business and his firm was having dealing with Rakesh Kumar. He further stated that Rakesh Kumar, at the time of giving credits to persons going abroad through his firm, kept blank cheques, blank stamp papers as security with him. Accused also stated that he suffered a paralytic attack on 18.11.2012 and remained on bed since then under treatment. Said Rakesh Kumar created false documents and started pressurizing his family to pay him the amount. The accounts were settled by Panchayat and written agreement was executed by Rakesh Kumar in presence of Panchayat members and his family on 05.04.2013. It is further stated that final amount of ₹15 lacs was given in cash to Rakesh Kumar and he gave in writing that

nothing is due to be paid. It is also stated by the accused that the agreement

was reached with his family as he was bed ridden at that time. Later on, Rakesh Kumar by fabricating the blank cheque lying with him, misused the same against him and filed the present false complaint against him. Accused further stated that he lodged a complaint against Rakesh Kumar and FIR No.30 dated 20.02.2014 was registered against him at Police Station Navi Baradari, Jalandhar under sections 420, 465, 468, 471, 120-B IPC regarding the cheque in question. Accused pleaded that there was no liability of ₹26,75,000/- to be discharged on 05.07.2013 towards the complainant who has already received ₹15 lacs as full and final settlement of accounts. In defence, accused examined DW-1 Manpreet, Assistant Manager, Central Bank of India, DW-2 Sandeep Kumar, Technician, DW-3 Sandeep Kumar, Assistant Accountant, DW-4 Head Constable Gurdial, DW-5 Ashish Khanna, Accountant, DW-6 Kuldeep Kumar, DW-7 Ram Nath Pandey, Senior Supervisor and DW-8 Mayank Bhatnagar.

Learned JMIC, Jalandhar, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 16.11.2015.

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

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

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. 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.

From the record, I find that both the parties admitted writing regarding compromise dated 05.04.2013. I have gone through the copy of the writing. It is clearly written that now nothing remains due against each other. Though, in the writing, it has not been specifically written as to how much money has been received or whether it has been received in cash or through cheque. Learned counsel for the complainant argued that a post dated cheque was given as per that compromise and the complainant had taken it in good faith. There is no such mention in the written compromise regarding receiving of post date cheque. If a post dated cheque was given for final settlement on 05.04.2013, then this fact might have been mentioned in the agreement and there may be one further condition that if the cheque is dishonoured, then what is to be done, therefore, non mentioning of fact of post dated cheque, creates doubt in the version of the complainant. Otherwise also, if a post dated cheque was given, then what was the necessity for the complainant to write in the agreement that from now nothing remains due against each other.

Secondly, it is in the evidence that FIR had also been registered regarding forging of cheque etc., in which challan has already been presented and even charges have also been framed and as argued, one witness has been examined. The accused has raised probable defence, which is duly supported and corroborated by the case of the complainant, especially the compromise dated 05.04.2013 and further from the defence evidence. The presumption under Section 139 of the Negotiable

Instruments Act has been duly rebutted.

The perusal of the judgment passed by the Court below shows that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 16.11.2015 passed by learned JMIC, Jalandhar, 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.

September 07, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No