

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

**CRM No.A-1532-MA of 2017 (O&M)
Date of decision: October 03, 2017**

M/s Gayatri Exports through its Prop. Sh.Narender Arora

...Applicant

Versus

Prop. M/s Roopa Handloom through its Prop. Sh.Subhash Chander

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arun Singal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-M/s Gayatri Exports through its Prop. Sh.Narender Arora has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Prop. M/s Roopa Handloom through its Prop. Sh.Subhash Chander, challenging the impugned judgment dated 18.05.2017 passed by learned Judicial Magistrate Ist Class, Panipat, 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 complainant M/s Gayatri Exports through its Prop. Sh.Narender Arora filed a complaint against accused Prop. M/s

Roopa Handloom through its Prop. Sh.Subhash Chander under Sections 138/142 of the Negotiable Instruments Act. As per complainant's version, accused used to purchase handloom, curtain clothes from the complainant from time to time on credit basis. Accused in order to discharge his legal liability, issued two cheques bearing No.033764 and 033765 dated 28.04.2013 and 08.05.2013 respectively amounting to ₹1 lakhs each, in favour of the complainant, which on presentation for encashment, were returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1 and proved both the cheques, memo, postal receipt, legal notice and reply to the legal notice.

In the statement under Section 313 Cr.P.C., the accused took the plea that he has already paid the amount by demand drafts of ₹2 lakhs.

Learned JMIC, Panipat, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 18.05.2017.

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 it is admitted by the complainant that it has received demand drafts of ₹2 lakhs from the complainant but volunteered that drafts were for some other transaction. No record has been produced by the complainant to show as to how much liability was there and how the payment of ₹2 lakhs is for another transaction. No bill, ledger, statement of account or any record showing any transaction between the parties has been produced by the complainant.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. The accused has raised the probable defence that he has paid the cheque amount by giving demand drafts of ₹2 lakhs. The demand drafts are admitted by the complainant. The complainant in the complaint also, nowhere stated regarding any transaction or regarding any fact that earlier also, the payment was made by the accused etc. Therefore, the defence raised by the accused is probable one. Furthermore, in the complaint, there is no mention that on which date, in which month and year, the liability arose and nature of the liability etc.

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 18.05.2017 passed by learned JMIC, Panipat, is correct, as

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

October 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No