

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

CRM No.A-2287-MA of 2016 (O&M)

Date of decision: March 08, 2017

Shri Bhagwan

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.M.S.Kathuria, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Shri Bhagwan has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Malik Power Transmission & Civil Contractors, challenging the judgment dated 14.10.2016 passed by learned Judicial Magistrate Ist Class, Jhajjar, whereby 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 Shri Bhagwan filed a complaint against accused Malik Power Transmission & Civil Contractors under Section 138 read with Section 142 of the Negotiable Instruments Act.

The averments of the complaint as noted down in the judgment passed by

learned JMIC, Jhajjar, are as under:-

“2. Brief facts of the case of the complaint are that accused/respondent is prop. firm namely Malik Power Transmission & Civil Contractors Aggarwal Bhawan Near Railway Crossing and Mandir, Narela, New Delhi through Prop. Bijender Singh S/o Hari Singh R/o Near Sindhu Border, Village Hamidpur Delhi. The complainant is also a partner orally in the above said firm which had been working for installing electric transformer on various places. The complainant is permanent resident of village Gudha, Tehsil & District Jhajjar and the complainant also invested some money in the above said firm with the accused/respondent. The respondent/accused have to pay Rs.10,00,000/- to the complainant in view of compromise took place between the parties before respectable on dated 02.11.2010. In view of compromise mentioned above the accused/respondent have issued a cheque no.290 dated 04.02.2011 of Rs. 10,00,000/- of Bank of India, Branch Bakhtawarpur, New Delhi-36 in favour of the complainant namely Shri Bhagwan and above said cheque was presented by the complainant to H.K.G.B., Jhajjar on dated 16.03.2011. But the same was dishonored by the Bank of India, Jhajjar vide dated 17.03.2011 with the remark in sufficient funds and returned to the bank HKGB, Jhajjar. The complainant received dishonored cheque stated above and other paper from the HKGB, Jhajjar on dated 11.04.2011. The complainant informed the accused/respondent about the dishonoring the cheque issued by him. But no satisfactory reply was given by the accused/respondent to the complainant. The complainant also sent a registered notice to the accused/respondent at the office address as well as on the home address. The respondent deliberately not received the registered letter sent to the office address and the respondent received the registered letter which was sent to him at the home address but he did not reply the notice up to date. Hence, in spite of service of the legal notice the accused/respondent have failed to pay the cheque amount to the complainant and thus the accused/respondent have committed an offence punishable U/s 138 read with 142 of Negotiable Instrument Act”

Learned JMIC, Jhajjar, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 14.10.2016.

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.

The perusal of the record shows that complainant filed the complaint against Malik Power Transmission and Civil Contractors Aggarwal Bhagwan through Proprietor Bijender Singh. The firm is not a partnership firm. Rather, it is a sole proprietorship firm, which is clear from the record. The complainant has stated that he was also a partner orally in the above-said firm. If the accused firm is a sole proprietorship as stated by the complainant in the complaint, then how he became oral partner. There is nothing on the record to show that as to when the complainant became oral partner or the accused is un-registered partnership firm. No record of the accused of any type has been summoned that the complainant was a partner. No record of any type has been shown as to how much money has been invested by the complainant in this firm. Even in the complaint, no particulars have been mentioned that on which date, in which month and year and how much amount has been invested with the accused.

Furthermore, the complainant has mainly relied upon the compromise mark-A. This compromise has also not been proved as per law as held by learned trial Court. Otherwise, it is unbelievable that the

take any receipt or get executed any security document or agreement of any type. There is no document to support the version of the complainant that he has invested the money of ₹20-22 lakhs. There are no particulars qua that investment. There is no document on record of any type to prove the investment.

Learned Magistrate further held that statement of account of the complainant Ex.D1 shows that the highest transaction into account of the complainant for the duration from 2007 to 2011 is that of ₹4 lakhs and that is too of the loan taken by the complainant from Oriental Bank of Commerce after mortgaging his land. This fact also makes the version of the complainant unreliable. Further, in cross-examination, the complainant stated that he invested into the accused firm through the cheque of his elder brother namely Satbir for a sum of ₹8,60,000/- but no such record has been produced upon the case file. The complainant also stated that two different cheques of ₹5 lakhs each from the account of Ramrti and Yashwanti were given to the accused but again no such record has been produced on the case file.

Keeping in view the evidence on record, I find that the complainant has failed to show prima facie any liability against the accused. The accused has produced the defence evidence. In view of the cross-examination of the complainant and from the defence evidence, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the

perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 14.10.2016 passed by learned JMIC, Jhajjar, 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.

March 08, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No