

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

**CRM No.A-286-MA of 2016 (O&M)
Date of decision: March 23, 2017**

Shri Krishana Enterprises

...Applicant

Versus

M/s Anil Industries

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Munish Kumar Garg, Advocate
for the applicant.

Mr.Prashant Vashisth, Advocate for
Mr.Sukhwinder Chatrath, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Shri Krishana Enterprises has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent M/s Anil Industries, challenging the impugned judgment dated 21.10.2015 passed by learned Judicial Magistrate Ist Class, Jind, 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 learned trial Court while passing the impugned judgment has not considered the facts and circumstances of the present lis and law points. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Shri Krishana Enterprises filed a complaint against accused M/s Anil Industries under Section 138 of the Negotiable Instruments Act. As per complainant's version, it is a firm which deals in Pashu Aahar (animal feed), being run by its partners Raj Kumar and Shri Niwas. Accused was well known to the complainant firm and its partners. The accused purchased Pashu Aahar worth ₹2,40,000/- from the complainant on 04.08.2011 and in discharge of said payment issued a cheque No.502514 dated 04.08.2011 for a sum of ₹2,40,000/- in favour of the complainant, which on presentation for encashment, was returned back along with the remarks "Insufficient Funds". Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMJC, Jind, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 21.10.2015.

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. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties 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 the defence of the accused is that he has no liability towards the complainant as he retired from M/s Anil Industries since 01.04.2011 from partnership. He did not purchase any goods from the complainant. The cheque in question was issued as security cheque to the complainant sometime earlier as blank signed cheque, the payment of which was got stopped on 23.12.2010 on account of dispute with the complainant. Further, the complainant firm is not the holder in due course and so has no right to present the cheque to its Banker as its payment was already stopped on 23.12.2010. In defence, accused examined DW-1 Satish Kumar, clerk Sale Tax office, Fatehabad and DW-2 Shivam Chhabra, Clerk, Bank of Baroda, Fatehabad. Ex.D3 is the copy of the application dated 23.12.2010 given to Bank of Baroda, Fatehabad for stoppage of payment of Cheques No. 502514, 502515 & 502516 and Ex.D4 is the certificate regarding stoppage of payment of cheques by the Bank.

Further, from the record, I find that there is not even a single document to show the signatures of the accused on any bill, receipt etc. regarding selling of animal feed. The complainant produced documents Ex.C6 to C8, which are photocopies and not per se admissible. These documents were tendered after the completion of statement of the complainant. Being photocopies, these are also inadmissible in the evidence.

The Court below further held that the complainant was asked to produce the Bills but no such record has been produced. Further, as per the complainant version, the animal feed in question was sent on a carrier but

there is no mention of these particulars in the complaint nor any driver was examined to show the delivery of the goods to the accused. Learned Magistrate also held that accused has business dealing for the last 8-10 years but payment was never made by any cheque except this cheque in dispute. The complainant in cross-examination also stated that he does not know as to who was the owner of the firm M/s Anil Industries but goods were taken by accused Vinod. He does not know whether the firm M/s Anil Industries is partnership firm or sole proprietary firm. He further admitted the fact that whole business of the accused firm was being done by Anil, but qualified by self stating that Vinod used to do so.

This cross-examination of the complainant and further the fact that there is no document on record to show this transaction having signatures of the accused nor the account books have been produced and also the defence version that payment of the cheque in question was stopped on 23.12.2010, shows that the defence raised by the accused is probable one. The cheque in question is stated to be issued on 04.08.2011 whereas the payment of this cheque had already been stopped by giving application to the bank on 23.12.2010 i.e. much earlier from the date of issuance of the cheque.

From the perusal of the judgment passed by the Court below, I find 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 21.10.2015 passed by learned JMIC, Jind, 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 23, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No