

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

CRM No.A-68-MA of 2016 (O&M)

Date of decision: August 17, 2017

Dureja Cattle Feed Industry through Sanjiv Kumar, Special Power of Attorney of Balraj Kumar

...Applicant

Versus

Guru Nank Agro Industry through its proprietor Sham Sunder and another

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.C.Arora, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Dureja Cattle Feed Industry through Sanjiv Kumar, Special Power of Attorney of Balraj Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Guru Nank Agro Industry through its proprietor Sham Sunder and Sham Sunder, challenging the impugned judgment dated 13.10.2015 passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib, 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Dureja Cattle Feed Industry

through its proprietor Balraj Kumar through Sanjiv Kumar, Special Power

of Attorney, filed a complaint against accused Guru Nank Agro Industry through its proprietor Sham Sunder and Sham Sunder under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned CJM, Sri Muktsar Sahib are as under:-

“2. Complainant has submitted that Dureja Cattle Feed Industry is a proprietor firm situated at Bathinda road, Sri Muktsar Sahib. Proprietor Balraj Kumar gave special power of attorney in favour of Sanjeev Kumar son of Nand Lal and he is well conversant with the facts of the case. It is submitted that Dureja Cattle Feed Industry keeps accounts in regular manner and in regular course of business. Balances are struck daily. The accounts are maintained in computerized manner in the computer of complainant firm. It is averred that accused no. 2 is proprietor of accused no. 1. Therefore, he is liable for all the actions of accused no. 1 in his personal capacity as well as proprietor of the firm. It is further submitted that firm deals with cattle feed and gives credit facility to its customers. Accused no. 2 Sham Sunder on behalf of accused no. 1 had approached him for the cattle feed on credit basis. He accepted his proposal and sent the cattle feed worth Rs.6,32,039/- and out of this accused made payment of Rs.3,20,000/-. To clear the balance liability, accused no. 2 Sham Sunder issued a cheque bearing no.57067 amounting Rs.3 lacs dated 25.03.2013 drawn at Faridkot Central Co-op Bank, Kotkapura in his favour at Sri Muktsar Sahib from the account of accused no.1. On 04.04.2013 the said cheque was presented through State Bank of India, Malout Road, Sri Muktsar Sahib and it was returned back on 10.04.2013 with the observation that there was insufficient balance in the account of accused no. 1. Thereafter a registered notice was served upon the accused on 22.04.2013. Thus, accused committed an offence punishable under Section 138 of NI Act. Hence, the present complaint.”

The accused took the plea that he had not issued any cheque Ex.C1 on 25.03.2013 amounting to ₹3 lakhs. He also stated that this cheque is forged and fabricated and is materially altered. In defence, accused examined DW-1 Anil Kumar Gupta, Handwriting and Fingerprint Expert.

Learned CJM, Sri Muktsar Sahib, after appreciating the

evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 13.10.2015.

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

Lower Court record was summoned.

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.

The perusal of the record shows that learned Magistrate found that a suggestion was put to the complainant in cross-examination that cheque Ex.C1 was for ₹30,000/- given by filling Dureja Cattle Feed Industry as security in April, 2012 to the complainant and remaining body of the cheque was filled by them. This suggestion has been denied. The complainant also denied the suggestion that digit “0” at point X was added later on and “Rs 3 lacs” and date “25.03.2013” were written later on.

CW-1 Sanjeev Kumar, Special Power of Attorney of Balraj Kumar stated that statement of account Ex.C1 was prepared by their Clerk Krishan Kumar but Krishan Kumar was not examined. The Court discussed the statement of account of the accused-firm and also statement of account

of cheque bearing No.51263 of an amount of ₹30,000/- issued in favour of Dureja Cattle Feed Industry but the said entry is not found in the statement of account produced by the complainant for the period 01.04.2012 to 31.03.2013. I have myself seen the original cheque. In the original cheque, digit “0” and slash “/” have been added later on, which are having different ink. Similarly, the words 'three lac only' is not in the hand of the person who has written Dureja Cattle Feed Industry. The expert witness DW-1 has also deposed qua these facts, which shows that the cheque has been materially altered and in view of the material alteration in the cheque, the applicant-complainant is not entitled to any relief.

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 13.10.2015 passed by learned CJM, Sri Muktsar Sahib, 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.

August 17, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No