IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1668-MA-2014 (O & M)
Date of Decision: 05.04.2017

M/s Raj Darshan Enterprises

... Applicant

Versus

M/s Shivam Sales Agencies and another

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. A.P.Jagga, Advocate,
for the applicant.

Mr. S. Satyanarayana, Advocate,
for the respondents.

INDERJIT SINGH, J.

Applicant-M/s Raj Darshan Enterprises has filed this application under Section 378 (4) of the Code of Criminal Procedure, 1973 seeking permission for leave to appeal against respondents-M/s Shivam Sales Agencies and another, challenging the impugned judgment dated 09.04.2014 passed by learned Judicial Magistrate Ist Class, Chandigarh, in Criminal Complaint No.49024 dated 14.06.2011, titled as 'M/s Raj Darshan Enterprises vs. M/s Shivam Sales Agencies and another', under Section 138 of the Negotiable Instruments Act, 1881, (for brevity, 'N.I.Act'), vide which the respondents-accused were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken

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therein. It is further stated that the impugned judgment passed by learned Judicial Magistrate Ist Class, Chandigarh, acquitting the respondents, is not sustainable and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued. The respondents put in appearance through their counsel and contested this application.

I have heard learned counsel for the parties and gone through the record of the trial Court.

From the record, I find that applicant-M/s Raj Darshan Enterprises filed a complaint against respondents-M/s Shivam Sales Agencies and Amit Khurana under Section 138 of the N.I.Act. It is mentioned in the complaint that the complainant has filed the complaint through its partner Vijay Kumar alleging that it had been supplying goods to accused concern and Shivam Trading Company during the course of business. Accused Amit Khurana represented himself to be the proprietor and incharge of accused No.1 and of Shivam Trading Company. The goods were billed in the name of either accused No.1 or Shivam Trading Company as per convenience of accused-Amit Khurana, who became indebted to complainant. In discharge of his liability, accused-Amit Khurana issued cheque bearing No.927259 dated 03.04.2011 in the sum of ₹2,51,690/-, drawn on Syndicate Bank, Vikas Puri, New Delhi, in favour of the complainant, which on presentation has been received back with the remarks “Exceeds Arrangement”. Thereafter, legal notice was issued to the accused and when the payment

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was not made within the stipulated period, the complainant filed the complaint.

Learned Judicial Magistrate Ist Class, Chandigarh, after appreciating the evidence, acquitted the respondents-accused vide impugned judgment dated 09.04.2014.

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

After hearing learned counsel for the applicant and after going through the record, especially the judgment passed by the trial Court, I find that the findings given by learned Magistrate are correct, as per evidence and law. These findings have been given after appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence. Nothing has been pointed out by learned counsel for applicant as to which material evidence has been misread and which material evidence has not been considered by the Court below.

Perusal of the record shows that it was the defence of accused that accused No.2 is the sole proprietor of Shivam Sales Agency and had closed the business with the complainant in May, 2010 after getting a statement of account from complainant showing 'Nil' balance. He also deposed that during course of business, he had issued blank signed cheque to complainant as security, which has been misused by the complainant. He himself appeared into the witness-box as DW 1 and stated that he has no concern with Shivam Trading Company. His

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business establishment Shivam Sales Agency is a sole proprietorship concern. He also deposed that he had last transaction with the complainant on 08.05.2010 whereby he received goods vide bill No.63, the payment of which amounting to ₹19,0776/- was made by him to the complainant, clearing his entire account. He also stated that he has three bank accounts in the name of Shiva Sales Agency, Amit Khurana and a current account. The complainant company has wrongly shown cheque bearing No.915268 dated 20.12.2010 in his statement of account, whereas, he never issued said cheque and did not receive any goods worth of the said amount. The accused also examined Bharat Bhushan Dhall, Marketing Manager, Syndicate Bank, Vikas Puri, New Delhi as DW 2, who brought summoned record pertaining to cheque bearing No.915268 and deposed that cheque book containing said cheque was issued by the Syndicate Bank to the account of Shivam Trading Company. He also deposed that Shivam Trading Company is also having a different account number than Shivam Sales Agency and both are separate entities. He produced statements of account of Shivam Trading Company.

Perusal of the record shows that the complainant failed to show any liability towards accused No.1-M/s Shivam Sales Agencies or that the cheque is issued by accused-Amit Khurana on behalf of M/s Shivam Sales Agency and from the account of Shivam Sales Agency. As per the learned counsel for complainant, the liability for payment of goods etc. is on M/s Shivam Trading Company which is also owned by

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Amit Khurana, but there is no cogent evidence on record in this regard. Furthermore, the complainant had maintained a separate ledger statement of account for Shivam Sales Agency, as reflected in the statement of account Ex.D-1. CW 1 Vijay Kumar admitted to have received notice Ex.D-2 from the accused, containing the defence version that there is no outstanding liability on part of the accused and the presentation of cheque in question is an attempt to blackmail the accused. Being fully aware of the defence of accused and having opportunity to prove its case, the complainant opted not to adduce any evidence showing actual delivery of goods to accused or showing its outstanding liability. No bill, invoice or statement of account was produced by the complainant despite the fact that it is a partnership concern maintaining its day to day record in due course of business. The trial Court also held that defence raised by the accused is probable one which has rebutted the presumption contained in Section 139 of the N.I. Act.

From the above discussion, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) Cr.P.C., the same is dismissed.

05.04.2017 **(INDERJIT SINGH)**
parveen kumar **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No

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