IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1770-MA of 2015 (O&M)
Date of decision: May 04, 2017

Sudesh Jindal

...Applicant

Versus

M/s Bharat Oil and Gas Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Gupta, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-Sudesh Jindal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against M/s Bharat Oil and Gas Corporation and other respondents, challenging the judgment dated 13.08.2015 passed by learned Sub Divisional Judicial Magistrate, Budhlada, whereby 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 further stated that impugned judgment reveals that the same has been passed on conjectures and surmises and is not sustainable in the eyes of law. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Sudesh Jindal filed a complaint against accused M/s Bharat Oil & Gas Corporation Ltd., Dinesh

Chand Katiyar and Registered Head Office under Section 138 of the Negotiable Instruments Act and Section 420 IPC. The brief averments of the complaint as noted down in the judgment passed by learned SDJM, Budhlada, are as under:-

> *"The present complaint under Section 138 of the Negotiable Instrument Act (hereinafter referred to as Act) has been preferred by complainant contending that accused Dinesh Chand Katiyar being Managing Director of Bharat Oil and Gas Corporation Limited issued advertisement in the newspaper that his company needed distributors in Punjab. Complainant applied for gas agency in the area of Budhlada. Complainant was also called for interview and thereafter accused demanded sum of Rs.5,00,000/- from her as security at the time of interview. The said amount was paid by the complainant by way of demand draft No. 14157 dated 20.10.2009. However the negotiations between them could not materialize and in order to refund the said amount, accused issued cheque No. 47715 dated 03.04.2010 payable at AXIS Bank Limited amounting to Rs.4,50,000/- in favour of the complainant. However when the cheque was presented for encashment, it was dishonoured vide memo dated 09.10.2010 intimated to her vide memo of her bank dated 15.04.2010 with remarks "account frozen". Complainant issued legal notice dated 16.04.2010 through registered post to accused and at the address of his company and registered office but the same was returned back with the report of "premises locked". It has been alleged that accused was in knowledge of the said legal notice but failed to make the payment of the amount of cheque in question within stipulated period. Hence this complaint."*

The complainant examined herself as CW-1 and closed the evidence. On the other hand, accused examined DW-1 Navneet Sharma, Assistant Manager, AXIS Bank, who proved attested copy of account statement of firm of the complainant for the period 19.03.2010 to 30.04.2010 and deposed that as per account statement sum of ₹17,54,333.86 was in the said account. He has also proved other leaves of account statements of accused as Ex.DW1/B and further deposed that one application dated 10.03.2010 was received by their bank being written by

SHO, PS Kasana to freeze the account of accused and proved copy of same as Ex.DW1/C. The accused also tendered into evidence, certified copies of zimni orders and remand papers dated 02.04.2010 as Ex.DA, jail certificate of District Jail Gaziabad as Ex.DB and report of PS Kasana as Ex.DC and closed the evidence.

Learned SDJM, Budhlada, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 13.08.2015.

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.

From the record, I find that as per version in the complaint as well as version of the complainant as CW-1 cheque has been issued by accused Dinesh Chand Katiyar on 03.04.2010. This fact has been falsified by the accused by showing that he was in judicial custody since 02.04.2010. It is admitted by the complainant in cross-examination that he never met accused in the jail. Otherwise also, there is no case of the complainant nor there is any evidence that accused issued the cheque while he was in police/judicial custody. Therefore, issuance of cheque on 03.04.2010 is found false. It is nowhere the case of the complainant that a post-dated cheque has been given.

Secondly, the cheque is stated to be of the amount of ₹4,50,000/- but it is duly proved by the accused that as per statement of account ₹17,54,333.86 was in the said account. The cheque was dishonoured with the remarks 'account frozen'. The account has not been forzen by the accused. It is frozen by the police authority, as argued, as per the order of learned SDM. Therefore, dishonouring of the cheque is beyond the control of the accused.

The accused has taken the defence that he was in custody from 01.04.2010 in FIR No. 163 of 11.03.2010, PS Kasana. When police arrested him, situation like riots arose in his office and various people vandalized his office and his blank signed cheques were also stolen. Even his account was also sealed by the police. This defence has been duly supported and corroborated from the defence evidence as well as statement of the complainant. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted and further there is no cogent evidence on the record to show that accused has issued the cheque on 03.04.2010 as alleged by the complainant as he was in custody and the circumstances for dishonouring of the cheque are beyond the control of the accused.

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 13.08.2015 passed by learned SDJM, Budhlada, 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.

May 04, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**