IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1851-MA of 2014 (O&M)
Date of decision: February 01, 2017

The Yamuna Syndicate Ltd.

...Applicant

Versus

Parshant Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunny K. Singla, Advocate
for the applicant.

Mr.H.R.Chaudhary, Advocate for
Mr.Sanjay Verma, Advocate
for the respondent.

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INDERJIT SINGH, J.

Applicant-The Yamuna Syndicate Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Parshant Kumar, challenging the impugned judgment dated 27.10.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, 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 if the special leave to appeal is not granted, then it will amount to miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant The Yamuna Syndicate Ltd.

filed a complaint against accused Parshant Kumar under Section 138 of the Negotiable Instruments Act. As per averments of the complaint, accused was employed with the complainant at its branch in Bulandhshahar and while working as sales officer, the accused committed fraud with the complainant company by receiving amount of ₹8,42,339/- from various customers of the company and by not depositing the same in the account of company. In order to compensate the complainant company, the accused in discharge of his existing liability towards complainant, issued a cheque bearing No.181943 dated 03.12.2011 in the sum of ₹8,42,339/-, which on presentation before the bank for encashment, was returned back unpaid with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The defence of the accused is that he has not issued any cheque in favour of the complainant in discharge of any existing liability towards him. He further stated that he had taken sub dealership from the complainant under the name and style of M/s Balaji Automobiles and at the time of taking the said dealership, the complainant has obtained two blank signed cheques from him and cash ₹50,000/- from him as security. He further stated that in the year 2010, he closed the said dealership with the complainant and the account was thereafter settled and at that time ₹50,000/- were refunded to him by the complainant company, but the complainant did not return the blank signed cheques to him in spite of his repeated requests. He further stated that thereafter the complainant got employed him (accused) in the complainant firm and he worked with the complainant, but the complainant did not pay salary and DA etc. to him for several months. The cheque in question has been misused by the complainant and the complainant has forged and fabricated the cheque in question against the accused to force the accused not to claim his salary and DA from the complainant company. He also tendered into evidence documents Ex.D1 to D7 and mark A to mark I.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, acquitted the accused-respondent.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the application.

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

From the record, I find that CW-1 B.K.Tyagi in his cross-examination has stated that liability against accused arose on account of the fact that accused being employed as a sales supervisor with the complainant company, had taken money from the customers of the complainant and has not deposited the same with the complainant company and once the said fraud was unearthed, the accused issued cheque in question to complainant. The Court held that there are no account books on the case file from which the fact of any such fraud can be proved. Rather, CW1 in his cross examination stated that he does not know any details of how legal liability arose against accused. No police complaint was filed against the accused for defrauding the complainant company. It is further held that there is absolutely no evidence on record from which it can be proved that while being employed with the complainant company the accused had defrauded anyone. CW2, who was Assistant Manager, Accounts of the complainant company, though in his examination in chief has stated to the effect that fraud was committed by the accused, but in his cross examination he has stated that he was never employed in Bulandshahar Branch of the complainant company and he does not even know the time period from which the accused had worked with the complainant company at Bulandshahar. The Court did not give much weightage to the statement of CW2 being only deposing on hearsay evidence. CW2 had prepared account statement showing the exact amount of fraud committed by the accused on the basis of the affidavits given to the company by various persons who had allegedly made payment to the accused. None of those persons have been examined in the Court. CW2 has stated in his cross examination that all the affidavits produced by him on the file were purchased by the complainant company itself. The said fact only goes on to show the fact that no complaints were made to the complainant company by any customers on their own and rather the complainant company itself purchased stamp papers and got them signed from its customers. There is no record of any tractors having been sold by the accused to the persons whose affidavits have been placed on file. The Court below held that the fact of fraud having been played by the accused with the complainant company is not being proved in the present case by leading cogent evidence.

Learned Magistrate further held that sub dealership has been admitted. It is also admitted that ₹50,000/- was taken in cash which has been refunded at the closing of the dealership. The fact that thereafter, the accused has been employed in the complainant company is also not disputed. Therefore, learned Magistrate from the evidence on record found that presumption under Section 138 of the Negotiable Instruments Act has been duly rebutted by the accused while by raising probable defence.

The findings have been given by learned JMIC, Yamuna Nagar at Jagadhri, while appreciating the evidence in right perspective. In no way, the findings can be held as perverse. 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.

In view of the above discussion, I find that the impugned judgment dated 27.10.2014 passed by learned JMIC, Yamuna Nagar at Jagadhri, 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.

February 01, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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