IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1857-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 accused debited a sum of ₹1,53,175/- from imprest account which was being maintained by accused for official purposes. It is the case of the complainant that accused admitted the fact of having withdrawn that amount and in discharge of his existing liability, issued a cheque bearing No.181944 dated 03.12.2011 in the sum of ₹1,53,175/-, which on presentation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.

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 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.

The perusal of the record shows that the the complainant in cross-examination stated that he is an employee of the complainant company. He further stated that accused was a sales supervisor in Bulandshahar and was doing all the functions of Branch Manager there. He further stated that accused had committed frauds with the company whereby he had taken money from customers of the company on behalf of the company and had not deposited the said money in the account of the company. He further stated that in order to compensate the company, the accused had thereafter issued two cheques in favour of the company, one of which happens to be the cheque in question. CW-1 B.K.Tyagi also stated in the cross-examination that he has seen the case file and there is no document on the file from which it can be proved that accused has defrauded the company and its customers. He further stated that he does not know from how many customers the accused has taken money and not deposited with the company. It is also in the cross-examination that company has not filed any complaint with the police regarding the fraud. CW-1 further admitted that accused had taken sub dealership of the complainant company. He also admitted that accused had deposited

₹50,000/- with the complainant company as security but denied that two signed security cheques were taken from the accused and those blank signed security cheques have been misused by the complainant. CW-1 B.K.Tyagi further stated that he does not know the details of legal liability which allegedly exists against the accused.

Learned Magistrate after discussing the evidence on record found that the version of the complainant is that accused has withdrawn ₹1,53,175/- from the imprest account which was being maintained by the accused but in the cross-examination, the complainant has not placed on record any document from which it can be proved before the Court that complainant company had given a charge of imprest account to the accused and accused was handling imprest account and had in fact withdrawn ₹1,53,175/- from the said imprest account. Further, the Court held that when CW-1 was cross examined, he did not state that liability arose on account of withdrawal made by accused from imprest account, but rather stated that cheque in question was issued by accused to the complainant since he had defrauded the complainant company by taking money from the customers of the complainant company and by not depositing the same with the complainant company. Learned Magistrate also held that two versions have been given regarding the liability. The fact ₹50,000/- was taken by the complainant company at the time of giving of sub dealership and that amount has been refunded has also been admitted.

From the evidence on record, the Court below held that presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused while by raising probable defence. There is nothing on the record that ay evidence has been misread or any material evidence has not been considered by the Court below.

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 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**