

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

CRM No.A-1895-MA of 2014 (O&M)

Date of decision: May 24, 2017

Satbir

...Applicant

Versus

Sandeep Bhagat alias Sanjay Bhagat

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Sharma, Advocate
for the applicant.

Mr.Amit Kumar Jain, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Satbir has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Sandeep Bhagat alias Sanjay Bhagat, challenging the judgment dated 05.09.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, whereby 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 application is not entertained, then the applicant would suffer irreparable loss which could not be compensated later on. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Satbir, partner of M/s S.P.

Timber filed a complaint against accused Sandeep Bhagat, proprietor of M/s Bhagat Timber under Section 138 of the Negotiable Instruments Act. As per complainant's version, he and accused were dealing in timber and having good business terms with each other and in discharge of his existing liability towards the complainant, the accused issued cheque bearing No.022772 dated 30.04.2010 in the sum of ₹2,20,000/-, which on presentation for encashment, was returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

On the other hand, the defence of the accused is that he has not been supplied any timber and the cheque in question was given as security for supply of timber.

Learned JMIC, Yamuna Nagar at Jagadhri, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 05.09.2014.

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

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

I have heard learned counsel for the parties 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.

The perusal of the cross-examination of complainant shows that complainant stated that he has brought no proof as to whether he is proprietor of M/s S.P.Timber. He volunteered to state that he can produce the certificate of sales tax to prove the fact that he is proprietor of M/s S.P.Timber. He further stated that present cheque in question has been given to him by Sanjay Bhagat and he volunteered to state that same was given to him by Sandeep Bhagat. He next stated that accused is known by name Sanjay Bhagat. He also stated that he does not know as to whether legal notice was sent to accused by name of Sandeep Bhagat or not. He refused this suggestion that he has taken the said cheque as security from accused for supplying wood. He also refused the suggestion that later on he did not supply any wood to accused. He also stated that he has no proof as to whether he had supplied any wood to the accused and he does not have any statement of account qua the said fact. He further stated that he maintains account of his firm and he also files income tax return. He further stated that he does not know as to when and for which amount the wood was supplied by him to accused. This cross-examination of the complainant supports the defence version raised by the accused that no wood has been supplied. The case has been filed on behalf of the firm M/s S.P.Timber. In no way, it can be held that firm was not maintaining any account of its business transactions. The above-said cross-examination of the complainant, rather shows that no wood was supplied to the accused, otherwise, there might have been some record of any type with the complainant. Therefore, the defence raised by the accused is probable one.

Secondly, no document has been placed on record to connect

the complainant Satbir with M/s S.P.Timber. The complaint has been filed

by Satbir as partner of M/s S.P.Timber. During evidence, it is stated that M/s S.P.Timber is a proprietorship firm of complainant but despite cross-examination on this fact, no document has been placed on the record by the complainant as to how he is connected with the firm.

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 05.09.2014 passed by learned JMIC, Yamuna Nagar at Jagadhari, 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 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No