

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

CRM No.A-232-MA of 2014 (O&M)

Date of decision: September 06, 2017

M/s Amrit Agrovat Pvt. Ltd.

...Applicant

Versus

Pavitra

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jai Vir Yadav, Advocate
for the applicant.

Mr.Rajesh Lamba, Advocate
for the respondent.

INDERJIT SINGH, J.

CRM No.10783 of 2015

The application is allowed subject to all just exceptions.

Annexures A1 to A3 are taken on record.

CRM No.A-232-MA of 2014

Applicant-M/s Amrit Agrovat Pvt. Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Pavitra, challenging the impugned judgment dated 07.12.2013 passed by learned Judicial Magistrate Ist Class, Gurgaon, 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,

therefore, prayed that leave to appeal be granted.

As per the record, the complainant M/s Amrit Agrovat Pvt. Ltd. filed a complaint against accused Pavitra under Section 138 read with Section 142 of the Negotiable Instruments Act. As per complainant's version, it is carrying on business of manufacturing of poultry feeds. Accused is carrying on business of poultry in the name of M/s Pavitra Poultry firm. Accused approached the complainant and requested to supply poultry feeds manufactured by it on credit basis. Accused promised to pay the price of feeds purchased by him within two weeks. Believing the accused, the complainant stated supplying poultry feeds to accused and accused also started making payment to complainant from time to time. As per the running account, an amount of ₹8,78,127/- was outstanding against the accused. On request of complainant, accused issued a cheque bearing No.035188 dated 23.04.2011 for ₹8,78,127/-, which on presentation for encashment was returned back dishonoured. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In defence, accused himself appeared as DW-1 and stated that he has never purchased any goods from M/s Amrit Agrovat Pvt. Ltd. and the bills of goods purchased by him from M/s Amrit Agrovat Pvt. Ltd. were already repaid by him. He further stated that he has given the cheque in question as security to M/s Amrit Feeds Limited in the year 2000. In his cross-examination, he stated that document Mark-'A' does not bear his signatures.

Learned JMIC, Gurgaon, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide

impugned judgment dated 07.12.2013.

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

Notice of the application was issued. Learned counsel for the 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. 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.

From the record, I find that when the signatures on the cheque have been admitted, the presumption arises under Section 139 of the Negotiable Instruments Act in favour of the complainant and the accused can rebut that presumption by raising probable defence, which is supported by evidence.

The perusal of the record shows that defence of the accused is that he never purchased any goods from M/s Amrit Agrovet Pvt. Ltd. The complainant put reliance on bills Ex.PW1/1 to PW1/7 and the total amount of bills comes to ₹2,13,127/-, whereas complainant put the liability upon the accused of ₹8,78,127/-. Learned Magistrate held that complainant has failed to explain the total purchase made by accused from M/s Amrit Feeds Limited against which the cheque was allegedly issued.

At the time of arguments, learned counsel for the applicant

argued that poultry feeds have been purchased from M/s Amrit Feeds Limited but the complainant has taken over M/s Amrit Feeds Limited in the year 2005 but no such plea has been taken by the complainant in the complaint. No details have been given regarding the transaction, as to whether, feeds etc. have been purchased from M/s Amrit Feeds Limited or from present complainant firm. From the perusal of the complaint, it looks that cheque has been handed over to the complainant company in the year 2011 but the case of the accused is that the cheque was handed over in the year 2000. The defence of the accused is supported by the bank statement Ex.DW1/A which clearly shows the encashment entries of cheques of same series in the year 2003.

Furthermore, the statement of complainant on the record shows that in cross-examination, he has stated that he does not know whether the accused had given the blank cheque as security to Amrit Feeds Ltd. around 12 years back. The complainant has not denied the fact that cheque has been given to Amrit Feeds Limited about 12 years back. Similarly, the complainant stated in cross-examination that he does not know as to who had filled the cheque. Further, he has admitted that PW1/1 to PW1/7 are of Amrit Feeds Ltd. and he also stated that no material was sent after these bills.

The cross-examination of the complainant supports the version of the accused. The accused has raised probable defence, which has been duly supported and corroborated by the statement of the complainant as well as defence evidence produced by the accused. Therefore, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

The perusal of the judgment passed by the Court below shows

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 07.12.2013 passed by learned JMIC, Gurgaon, 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.

September 06, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No