

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

CRM No.A-25-MA of 2014 (O&M)

Date of decision: December 13, 2017

M/s Amrit Agrovat Pvt. Ltd.

...Applicant

Versus

Ashok Yadav

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Tapan Yadav, Advocate
for the applicant.

Mr.Ashok Tyagi, Advocate
for the respondent.

INDERJIT SINGH, J.

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 Ashok Yadav, challenging the impugned judgment dated 10.10.2013 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 Ashok Yadav 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 trading in poultry in the name and style of M/s Ashok Poultry firm. Accused approached the complainant and requested to supply poultry feeds manufactured by it on credit basis. Believing the accused, the complainant started supplying poultry feeds to accused and accused also started making payment to complainant from time to time. The accused has a running account with the complainant and the accused has not paid the entire due to the complainant. As per running account, an amount of ₹2,52,408/- was outstanding against the accused. On request of complainant, accused issued a cheque bearing No.179841 dated 27.08.2011 for ₹2,52,408/-, which on presentation for encashment was returned back dishonoured with the remarks 'insufficient funds'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

In defence, accused examined DW-1 Om Parkash, Clerk, PNB, who deposed that cheque No.179842 amounting to ₹100/- was credited in the account of M/s Amrit Feed on 05.03.2005. He further deposed that Ashok has instructed their bank to stop payment of cheque in question on 09.04.2009 as per documents Ex.DW1/A to Ex.DW1/C.

Learned JMIC, Gurgaon, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 10.10.2013.

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.

Learned Magistrate held that to rebut the presumption, the main plea of defence is that the cheque in question was issued to firm M/s Amrit Feeds as security on 05.03.2005. The complainant while appearing as CW-1 deposed that their firm has received the cheque in question on 27.08.2011 but as per documents Ex.DW1/A to Ex.DW1/C, it is revealed that accused has instructed his bank to stop the payment of cheque in question on 09.04.2009. This evidence before the lower Court shows that if the payment has already been stopped by the accused regarding this cheque on 09.04.2009, then it looks improbable that accused will issue the cheque after about two years four months to the complainant. Furthermore, the accused has duly proved that cheque No.179842 amounting to ₹100/- was credited in the account of M/s Amrit Feeds on 05.03.2005, which shows that the cheque in question i.e. 179841, was given to M/s Amrit Feeds at that time as security in March 2005.

It is the case of the complainant that accused used to make payment from time to time but the complainant has not proved any such

payment made by the accused or other transactions between them. The

documents Ex.DW1/A to Ex.DW1/C also prove that accused has instructed his bank to stop the payment much before the date of allegedly receiving of cheque by the complainant, which creates doubt in the complainant's version. Learned Magistrate further held that the bills tendered by the complainant Ex.P8 to Ex.P24 do not bear any receipt from the accused.

The accused has raised probable defence, which is duly supported and corroborated by the evidence of the complainant as well as defence evidence. 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 10.10.2013 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.

December 13, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No