IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-311-MA of 2015 (O&M)
Date of decision: May 02, 2017

M/s Dev Diesel Service

...Applicant

Versus

Pankaj Aggarwal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.K.Jindal, Advocate
for the applicant.

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INDERJIT SINGH, J.

Applicant-M/s Dev Diesel Service has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Pankaj Aggarwal, challenging the judgment dated 12.12.2014 passed by learned Judicial Magistrate Ist Class, Karnal, 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 findings of learned JMIC, Karnal, acquitting the respondent are based on surmises and conjectures and are contrary to law and evidence on record. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant M/s Dev Diesel Service through proprietor Dev Vratt filed a complaint against accused Pankaj

Aggarwal under Section 138/142 of the Negotiable Instruments Act. As per complainant's version, complainant firm used to deal in sale, service, spares of Cummins, Kirloskar, Leyland, Skoda, imported engines etc. The complainant rented out a diesel generator set @ ₹1,50,000/- per month to the accused. In discharge of this liability, accused issued a cheque No.196014 dated 14.08.2007 for ₹41 lakhs in favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Insufficient Funds'. Legal notice was sent but received back served with report 'Bar Bar Talash Karne Par Prapatkarta Nahi Milta'. When the amount was not paid, then the complaint was filed within time.

In defence, accused examined DW-1 Yashpal Chand Jain, Handwriting and Fingerprint Expert, who tendered his affidavit Ex.DW1/A along with report Ex.DW1/B and photo chart Ex.DW1/C to Ex.DW1/F. DW-2 Dipti, STA, Income Tax Department tendered income tax return of the complainant firm for the financial year 2004-05 Ex.DW2/A, statement of affairs Ex.DW2/B, Form No.16 Mark D1 to D4 etc.

Learned JMIC, Karnal, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondent vide impugned judgment dated 12.12.2014.

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

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

From the record, I find that among other disputes, there is also dispute between the parties that cheque in question has been tampered with by the complainant and figure '4' has been inserted in the figure before '1' to make it ₹41 lakhs from ₹1 lakh and to prove this, the accused has examined DW-1 Yashpal Chand Jain, Handwriting and Fingerprint Expert. Though the complainant has also examined Handwriting and Fingerprint Expert. I have seen the original cheque, which is on the record Ex.C1. On the face of it, it shows that figure '4' has been inserted before '1' in the cheque. The cheque in question, is therefore, tampered with. It is settled law that on the basis of tampered documents, no relief can be granted.

From the record, I find that the findings given by learned Magistrate are correct, as per evidence and law. There is no document on the record to show that the said diesel generator was given on rent for three years. Otherwise also, if the diesel generator has been given for 3 years at monthly rent of ₹1,50,000/-, then there is nothing to show that even a single installment has been paid by the accused towards the rent within these three years.

The counsel for the complainant relied upon the challan Ex.C12 dated 02.09.2004, which is a photocopy and learned Court below has rightly not relied upon this challan.

Learned Magistrate further held that complainant was a man of ordinary means and not filing huge returns which in turn shows that he must not have been dealing in sale and purchase of second hand diesel generator set and never used to rent out the diesel generator set to the society at large. Had the complainant doing so and renting out generator sets on huge rent, as alleged, then he would have been earning in lakhs or even in crores for the reason he had around fifty customers but nothing of that sort has been depicted by the income tax returns of the complainant.

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 view of the above discussion, I find that the impugned judgment dated 12.12.2014 passed by learned JMIC, Karnal, 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 02, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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