

CRM-A-518-MA-2014

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

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Date of Decision: 25.04.2017

Parveen Kumar

..Applicant/Appellant

Versus

Jeeta

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Akshay Jindal, Advocate for
the applicant.

Mr. G.S.Sandhu, Advocate,
for the respondent.

INDERJIT SINGH, J.

Applicant-Parveen Kumar has filed this application under Section 378 (4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against respondent-Jeeta, challenging the impugned judgment dated 01.02.2014 passed by learned Judicial Magistrate Ist Class, Karnal, in criminal complaint No.666 dated 23.08.2011, titled as 'Parveen Kumar vs. Jeeta', filed under Section 138 of N.I.Act, vide which the respondent-accused 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 the impugned judgment passed by learned Judicial Magistrate Ist Class, Karnal, acquitting the respondent

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under Section 138 of the N.I.Act, is based on surmises and conjectures and contrary to the law and evidence on record and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued. The respondent put in appearance through his counsel and contested this application.

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

From the record, I find that applicant-complainant, Parveen Kumar filed a complaint against respondent-accused under Section 138 of the N.I.Act. The brief facts of the complaint are that the complainant was the partner of M/s Kali Ram Praveen Kumar, Gharaunda which deals in sale and purchase of foodgrains. The accused being an agriculturist used to sell his agricultural produce through the complainant and take advances from time to time to meet his personal needs. The complainant-firm maintained the account of the accused in the account books prepared and maintained in ordinary course of business. In these account books, due entries were made under the head of credit and debit. On 30.04.2011, the accused settled the account maintained at complainant-firm wherein a sum of ₹4,51,000/- including interest was found to be due towards him. The accused put his signature in the *Bahi* of the complainant-firm. On 02.05.2011 and 09.05.2011, accused again borrowed amount of ₹24,000/- and ₹20,000/- from the complainant, raising his total liability to the tune of ₹4,95,000/-. The

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accused in discharge of his liability issued cheque No.014055 dated 30.05.2011, amounting to ₹4,95,000/-, drawn at Oriental Bank of Commerce, Gharaunda, in favour of the complainant. The complainant presented the cheque for encashment with his banker, but the same was returned unpaid with remarks 'Account Closed'. Thereafter, legal notice was sent to the accused and when the amount was not paid, complaint was filed.

To prove his case, the complainant examined 04 witnesses including himself and thereafter closed his evidence.

Statement of accused under Section 313 Cr.P.C. was recorded wherein he pleaded to be innocent and alleged his false implication by the complainant. In his defence, the accused examined Satyawar Sharma, Assistant, Oriental Bank of Commerce as DW 1 and thereafter closed his defence evidence.

Learned Judicial Magistrate Ist Class, Karnal, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 01.02.2014.

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

After hearing learned counsel for the applicant and after going through the record, especially the judgment passed by the trial Court, I find that the findings have been given as per law and evidence. In no way, the findings can be held as perverse or against the evidence. At the time of arguments, nothing has been pointed out as to how the

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findings are perverse or against the 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.

From the record, I find that firstly, particulars of liability by giving the details as to how the amount of ₹4,51,000/- came as a total amount, have not been mentioned. There is nothing on record as to how much amount has been paid by the complainant to the accused and as to what rate of interest would accrue. Secondly, it is proved on record that the accused has been dealing with the complainant firm since 2007, but the complainant has only tendered *Bahi* pertaining to the year 2010-2011. It was the case of the complainant that entire account of the accused was settled meaning thereby the account of the accused must have been settled for the period pertaining to the years 2007 to 2011, but without the account books for the period 2007 to 2009, the exact liability of the accused could not be ascertained.

The trial Court held that the *Bahi* only mentions the amount given to the customer and not the agricultural produce sold by the accused to the complainant during the year 2007 to 2010 and, therefore, the complainant only tendered *Bahi* record for the year 2010-11 to establish the liability of the accused and not produced other account books maintained by him. It is written in the complaint that amount on account of the value of the produce sold was being credited to the account, but the complainant has not produced other account books maintained by him. The trial Court also held that ledger account of the

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accused maintained at firm in ordinary course of business was not produced by the complainant for the reasons best known to him. In absence of the concerned record, the trial Court could not ascertain the exact liability of the accused and it also failed to understand what was the basis for the firm to ascertain the liability of the accused. The complainant stated that record for the period 2007 to 2010 has been destroyed by him, but the trial court did not believe the version of the complainant for the reason no ordinary prudent man would destroy that record which has not been settled and would obviously preserve it to safeguard his interest in near future. The complainant also failed to tell the amount credited or debited in the account of the accused during financial year 2007-08, 2008-09 and 2009-10. Moreover, the *Bahi* only mentions the amount which was given to the accused and no entry regarding the amount paid to the complainant by selling the agricultural produce has been mentioned. It is also in the evidence that the complainant did not examine the person who made the entries in the *Bahi*. The trial Court also did not believe the balance sheet Mark A and Mark B, as contents of the same are not proved. The balance sheet pertains to the years 2010-11 and 2011-12, not for the preceding years. The trial Court further held that from the perusal of cheque, it is clear that signature and remaining columns of the cheque were filled up by the different persons. Once the liability of the accused has not been established by the complainant, the version of the accused has to be believed that the cheque in question was issued by him as a security

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cheque and not in discharge of any legally enforceable debt/liability.

Moreover, in the complaint, no particulars of liability have been mentioned as to how the liability arose and as to how much is the exact liability. All the account books maintained by the complainant are not produced. Even at the time of his cross-examination, the complainant failed to tell as to how much amount was given at which time and as to what was the liability in which year. Nothing has been shown on the record as to how much agricultural produce was sold by the accused on the shop and as to how much amount has been adjusted.

Keeping in view the above facts, I find that the presumption under Section 139 of the N.I.Act has been duly rebutted by the accused by raising probable defence. From the above discussion, I find that findings given by the trial Court are in right perspective and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) read with Section 482 Cr.P.C., the same is dismissed.

25.04.2017

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	No