

CRM-A-558-MA-2015

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

**CRM-A-558-MA-2015 (O & M)
Date of Decision: 09.03.2017**

M/s Suraj Timber

..Applicant/Appellant

Versus

Suraj Bhan

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Sunil K. Tandon, Advocate,
for the applicant.

INDERJIT SINGH, J.

CRM-10560-2015

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 73 days in filing the application seeking leave to appeal, is condoned.

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Applicant-M/s Suraj Timber through its proprietor Jasbir Singh has filed this application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') seeking permission for leave to appeal against respondent-Suraj Bhan, challenging the impugned judgment dated 09.10.2014 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, in criminal complaint

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No.2352 dated 03.07.2010, titled as 'M/s Suraj Timber vs. Suraj Bhan', filed under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, '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, Yamuna Nagar at Jagadhari, acquitting the respondent under Section 138 of the N.I.Act, is perverse and contrary to the facts and evidence on record and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

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

From the record, I find that applicant-complainant, M/s Suraj Timber through its proprietor Jasbir Singh filed a complaint against the respondent-accused under Section 138 of the N.I.Act. The brief facts as mentioned in the complaint are that the complainant and accused were known to each other and they jointly started business of timber merchant. The complainant further stated that the accused in order to discharge his existing liability issued cheque in question bearing No.120924 dated 06.03.2010 in the sum of ₹4,38,000/-, which on presentation for encashment received back with the remarks '**Payment stopped by drawer**'. Thereafter, legal notice was issued to the accused and when the payment was not made within the stipulated period, the

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complainant filed the complaint.

Learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 09.10.2014.

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 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 the accused got a DDR lodged with the police qua his cheques including the cheque in question having been lost. As per learned counsel for the applicant, the said DDR was lodged on 11.03.2010 whereas cheque in question is dated 06.3.2010. During his cross-examination, the complainant admitted that he has filed one another case, titled as 'Jasbir Singh vs. Suraj', against the present accused. He further stated that he had given money to the accused in the year 2008 and further stated that he had not shown the fact of having given money to the accused in his account books or in his income-tax return. He also stated that he does not know the date and month on

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which payment was given to the accused. He also stated that when payment was given by him to the accused, an entry to that effect was made in *Roznamcha* which was maintained in the course of partnership business and was written by the complainant, accused as well as Munshi of the partnership business. He also stated that partnership between him and accused was an oral partnership and there was nothing in writing between the parties. The complainant also stated in the cross-examination that his relative Jai Pal had also filed a complaint against the present accused and the said complaint was dismissed by the court and cheque involved in that case was also the cheque of same series. He admitted the fact that the accused lodged a DDR with the police qua his cheques including the cheque in question having been lost by him. He also stated that one Sushil was also a partner of the same partnership firm and he has also to be the complainant against accused qua dishonour of cheque of same series.

Perusal of the complaint shows that no date, month or year has been mentioned, when any amount has been given to the accused. There is no particular in whose presence, at which place and with which mode the payment was given to the accused. The version of the complainant having oral partnership and there is nothing in writing between the parties, is also not believable. There is also nothing as to how much money and on which date the amount was paid. The mere statement that the complainant had given money to the accused in the year 2008 and this was not entered into account-books or in the income-

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tax return etc. also support the defence version. Furthermore, there is no document of any type to show this transaction between the parties. Moreover, the accused also got the DDR lodged with the police regarding loss of cheque book including cheque in question.

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 leading evidence as well as from the case of the complainant. From the above discussion, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

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

09.03.2017
parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No