

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

CRM No.A-376-MA of 2013 (O&M)

Date of decision: October 29, 2018

M/s Pasco Export

...Applicant

Versus

M/s Sant Jewelers and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.B.S.Sobti, Advocate
for the applicant.

Mr.Nitesh Singhi, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-M/s Pasco Export has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Sant Jewellers and Ashok Kumar Kapoor, challenging the impugned judgment dated 22.05.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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, complainant M/s Pasco Export through its partner Brij Lal Gupta filed a complaint against accused M/s Sant Jewellers through its partner Ashok Kumar Kapoor and Ashok Kumar Kapoor under

Section 138 of the Negotiable Instruments Act. As per complainant's version, accused No.2 being partner of accused No.1, owed a sum of ₹1 lakh from the complainant and in discharge of enforceable legal liability, accused No.2 issued cheque No.0744447 dated 25.06.2002 for a sum of ₹89,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'account closed'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-2 and proved on record, original cheque, cheque returning memo, copy of legal notice, acknowledgment, receipt, postal receipts, cheque deposit receipt and copy of handwriting of accused on his letter pad. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him and pleaded his false implication. Accused further pleaded that he is not liable to pay any amount to the complainant. In defence, accused examined DW-1 Pawan Mehra.

Learned JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 22.05.2013.

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 respondents appeared and contested the application.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties and have gone

through the record.

From the perusal of the record, I find that the complainant has not mentioned any date, month, year as to when the loan was advanced to the accused. No other particulars of any type have been mentioned in the complaint. No receipt or security document was got executed while lending ₹1 lakh to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash. There is no document on record to show the loan transaction.

From the perusal of the record, especially the cross-examination of CW-1 complainant, I find that liability of the accused was towards Krishan Lal and complainant has not examined Krishan Lal to prove his stand. It is nowhere mentioned in the complaint that accused was having dealing with Krishan Lal and accused has liability to pay towards Krishan Lal. The perusal of the record shows that there is no document or evidence on record to show the liability of the accused towards M/s Pasco Export nor there is any document on record that it is a partnership firm and who are other partners. At the time of arguments, it is admitted that Krishan Lal was not the partner of the firm but he is son of Brij Lal and it is argued that on behalf of the firm, he entered into compromise Ex.C10. I have perused compromise/settlement Ex.C10 effected between Krishan Lal and accused. As per that settlement, the liability of the accused was toward Krishan Lal. Nowhere, the name of complainant firm or Brij Lal has been mentioned. There was no mention of any family concern etc. in the writing Ex.C10.

The presumption under Section 139 of the Negotiable

case, the accused has raised probable defence, which is duly supported and corroborated by defence evidence as well as case of the complainant itself and presumption has been duly rebutted.

The perusal of the findings given by learned trial Court 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. At the time of arguments, 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. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted. In no way, the impugned judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 22.05.2013 passed by learned JMIC, Ludhiana, 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.

October 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No