

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

CRM No.A-824-MA of 2013 (O&M)

Date of decision: September 27, 2018

M/s Chirag and company

...Applicant

Versus

Ram Kalyan Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Rai, Senior Advocate with
Mr.Gautam Dutt, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-M/s Chirag and company has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Ram Kalyan Sharma challenging the impugned judgment dated 03.08.2013 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 further stated that applicant would suffer irreparable loss and injury, if accused-respondent is acquitted. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant M/s Chirag and company filed a complaint against accused Ram Kalyan Sharma under Section 138/142 of

the Negotiable Instruments Act. As per complainant's version, complainant is doing business of LPG Cylinder testing and painting under the name and style of M/s Chirag and company. Father of accused provided space to complainant on monthly rent of ₹11,000/- on 24.06.2004. After some time, accused wanted to become business partner with the complainant and in this regard, agreement dated 06.12.2006 was executed between the parties. Complainant spent ₹18,50,000/- towards the establishment of said factory and accused paid sum of ₹5 lakhs instead of ₹9,25,000/-. The agreement was not materialized. It is further stated by the complainant that accused and his relatives threatened him and due to constant threats, complainant closed his factory and returned back to Gurgaon and all the articles were lying in the premises of the accused. After intervention of local persons, accused agreed to pay cost of equipments and loss suffered by the complainant and issued cheque bearing No.631117 dated 30.11.2010 amounting to ₹19,10,000/- in favour of the complainant, 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.

The complainant examined himself as CW-1. At the close of the complainant evidence, 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. In defence, accused examined DW-1 Constable Devi Dayal, who tendered into evidence documents Ex.D11 to D43

Learned JMIC, Gurgaon, after appreciating the evidence,

acquitted the accused-respondent vide impugned judgment dated

03.08.2013.

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.

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. 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.

From the perusal of the complaint itself, it is clear that no liability has been proved to pay such a huge amount of ₹19,10,000/- by the accused to the complainant. The factory was established by spending ₹18,50,000/- by the complainant and space was taken from the father of the accused on monthly rent. The accused wanted to become a partner and he only paid ₹5 lakhs and as per the allegations, the agreement could not be materialized, which means that the accused could not become partner in the business. There is nothing as to why accused will pay for the loss suffered by the complainant and why he will pay ₹19,10,000/- to the complainant, who has only invested ₹18,50,000/-. Furthermore, as per complainant version, ₹5 lakhs has already been paid by the accused to him. There is also nothing as to how the loss has been calculated by the complainant. There is

nothing whether accused is still running the factory or factory was

transferred in the name of accused by any document. The complainant in cross-examination further stated that he and accused had installed a machinery of ₹18,50,000/- in their business premises, which is again contradictory to the complainant's version.

From the evidence on record, I find that the defence of the accused is that complainant in collusion with Clerk of accused has misappropriated the cheque in question. To support his version, accused has placed on record Ex.D26, copy of the FIR got registered by present accused against his clerk. The police has also filed report in this regard Ex.D30. The complainant averred that he has also filed the FIR against accused for threatening him and taking forceful possession of his business, regarding which, police has filed report Ex.D23 with finding that complainant has himself willfully given possession of land and machinery to the accused and there is nothing due between complainant and accused.

The complainant has also not proved the factum of settlement and receiving of cheque due to intervention of some local persons. Learned trial Court has reached to the conclusion that complainant failed to bring any evidence to establish the liability to the tune of ₹19,10,000/-, especially, when the complainant had installed the machinery of ₹18,50,000/- only and has already received ₹5 lakhs from the accused. It is further held that during the argument, complainant took the plea that he has given ₹13 lakhks to the accused in lieu of ₹5 lakhs but nothing has come on record to prove such bald argument. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused which is supported and corroborated from the case of the complainant itself as well as defence

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 and accused-respondent has been rightly acquitted. 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 03.08.2013 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.

September 27, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No