In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1197-MA of 2015

.....

Date of decision:6.12.2018

M/s Paramount Powders Private Limited

...Applicant

v.

Ambika Dutt Verma

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rahul Gautam, Advocate for the applicant.

None for the respondent.

......

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Ambika Dutt Verma for grant of leave to appeal against the impugned judgment dated 18.12.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the complaint filed under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as `the NI Act') has been dismissed and the accused has been acquitted of the charges as framed against him.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been stated that the judgment of the learned trial Court acquitting the accused is erroneous and is based upon misinterpretation of evidence and law and has caused great injustice and prejudice to the applicant. It has, therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicant to file appeal.

The brief facts of the case as noted down by the learned Judicial Magistrate Ist Class, Gurgaon, in her judgment dated 18.12.2014 are as under:-

> "Briefly stated the facts of the complaint are that the complainant is a company duly incorporated under the provisions of Indian Companies Act, 1956 and is dealing in the business of powder coating manufacturing. The present complaint is filed by Sh. S.P. Singh, Authorized Representative of the complainant company vide resolution dated 26.03.2007 passed by the Board of Directors. That accused approached the complainant being the Authorized Signatory and Proprietor of M/s Rati Ram and Sons and showed his interest in becoming the dealer of the complainant for the supply of Powder Coatings in the area of Gurgaon, Manesar, Dharuhera and its suburbs. A dealership agreement in this regard got executed on 22.08.2008 at Gurgaon (Haryana) as per which accused agreed to make the payments against the supply of the goods within 60 days of supply/date of dispatch of the goods. That as per the terms of the agreement and requirement, complainant supplied

the powder coatings as per the orders placed by him and there was no complaint regarding the quality, quantity and description of the material supplied by the complainant to the accused. That at the time of execution of the agreement, it was decided that accused would make payment against the supply of the powder coatings regularly and promptly, however, since the beginning, accused has defaulted in making the payment against the supply of the material as a result of which complainant had to send many reminders to the accused for making the payments and has also personally visited the office of the accused but the accused has been avoiding to make the payment on the one pretext or the other. That since the accused was on debt of Rs.41,21,194/- and he was not in a position to pay the same, accused entered into a mortgaged agreement with the complainant with regard to his build up property situated in Uttarakhand vide mortgaged agreement dated 20.04.2010. Accused had also handed over 5 post dated cheques mentioning the amount bearing No.190312 dated 20.08.2012 of Rs.7,28,476/-, cheque No.190378 dated 20.08.2012 of Rs.6,08,795/-, cheque No.190370 dated 20.08.2012 of Rs.7,75,359/-, cheque No.788161 dated 20.08.2012 of Rs.8.61,017/- and cheque No.190335 dated 20.08.2012 of Rs.7,88,508/- in favour of the complainant firm. The complainant presented the said cheques for encashment but the same were returned dishonoured with the remarks "Funds insufficient" vide memos dated 25.08.2012. It is further submitted that the office boy/peon had collected the return memo dated 25.08.2012 from the bank of complainant i.e. Punjab National Bank on 29.08.2012 which finds mentioned in inward register of the complainant establishment and the same was received by the account in-charge Sh. Manish Jain on 29.08.2012. The complainant sent a legal notice dated 28.09.2012 to the accused but accused failed to make the payment. Hence, the present complaint."

The accused was summoned under Section 138 of the NI Act. Notice of accusation was served on which he pleaded not guilty and claimed trial.

In order to prove his complaint, the complainant examined himself as CW-1 and tendered various documents in evidence.

At the close of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he was confronted with the evidence of the complainant, but he denied the correctness of the same and pleaded himself as innocent. The accused has stated that the cheques were given as security which have been misused by the complainant. He has further stated that there is no enforceable liability to pay any amount to the complainant. He did not receive any legal notice. The complaint has not been filed within limitation. The accused has not examined any witness in his defence.

The learned Judicial Magistrate Ist Class, Gurgaon, vide impugned judgment dated 18.12.2014 after appreciating the evidence acquitted the accused. Aggrieved from the said judgment, the present appeal along with application seeking leave to file appeal has been filed by the complainant.

Notice of motion was issued in this case.

Despite service, no one has put in appearance on behalf of the respondent.

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

From the record, I find that first of all, the dishonour memo is dated 25.8.2012 and the legal notice was sent on 28.9.2012 and the learned trial Court held that it was sent after 30 days prescribed under law. There is no cogent evidence produced on the record as to when this memo regarding dishonouring of the cheques has been received by the complainant. The complainant has relied upon only one document i.e. their register but none of the official had come to show as to when this memo has been actually received in the inward register. The person who received the memo as well as the person who made entries in the register has not been examined. No Bank official or any post office official has been examined to prove that the intimation of dishonour was received on 29.8.2012. Therefore, the Court below held that the notice was not given within the statutory period.

Furthermore, in the present case there is no document on record to show the supply of articles to the accused. Even in the complaint no such details have been mentioned. Only copies of invoices/bills have been produced on the record but neither the original bills/invoices have been produced nor any permission to lead secondary evidence has been taken from the Court. Furthermore, the learned trial Court held that the ledger account is not a genuine document as it is the personal record maintained by the complainant and it has to be corroborated/authenticated by producing the invoices/bills etc. A perusal of the record, therefore, shows that there is no document on record to show the liability. Otherwise also, it looks unnatural that the accused will mortgage the property with the complainant and will also give five post-dated cheques. All these cheques are stated to be dated 20.8.2012 and are also alleged to have been filled-up by the complainant, then as to why this amount of ₹41,21,194/- has not been filled in one cheque only, even if it is taken that these have been given by the accused.

As already discussed, no particulars of the liability have been given nor even the dates etc. have been mentioned on which the articles were supplied. There is nothing on record to support the averments of the complainant. The complainant is a Company and it must be maintaining the record but no such record has been produced.

A perusal of the record shows that the findings given by the trial Court, in no way, can be held as perverse. Nothing has been pointed out as to how the findings are perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. There is nothing on the record to show that the findings are against the evidence or law. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

December 6, 2018. **(Inderjit Singh)**
Judge

hsp

NOTE: Whether speaking/reasoned: Yes
Whether reportable: No