

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

(1) CRM No.A-678-MA of 2016 (O&M)

K.S.Woollen Mills

...Applicant

Versus

M/s Raj Knit

...Respondent

(2) CRM No.A-679-MA of 2016 (O&M)

K.S.Woollen Mills

...Applicant

Versus

M/s Raj Knit

...Respondent

(3) CRM No.A-739-MA of 2016 (O&M)

K.S.Woollen Mills

...Applicant

Versus

M/s Raj Knit

...Respondent

Date of decision: September 19, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajansh Thukral, Advocate
for the applicant.

INDERJIT SINGH, J.

All the above-mentioned cases are taken up together for decision as the point for determination in all the cases is the same.

Applicant-K.S. Woollen Mills has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against

Respondent M/s Raj Knit, challenging the impugned judgments dated

09.10.2015 passed by learned Addl. Sessions Judge, Ludhiana, vide which appeals filed by accused-respondent against the judgments of conviction and orders of sentence dated 31.07.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, were allowed and he was acquitted of the charge framed against him.

It is mainly stated in the applications that accompanying appeals are likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant K.S.Woolen Mills through its proprietor Kuldip Kumar Jain filed complaints against accused M/s Raj Knit through its proprietor Parteek Jain under Section 138 of the Negotiable Instruments Act and 420 IPC. The facts are taken from CRM No.A-678-MA of 2016. As per complainant's version, accused used to purchase hosiery goods vide different bills from the complainant and further used to make part payments thereof from time to time. There was outstanding of ₹25,88,838/- against the accused. Accused in discharge of this part existing legal liability, issued cheque bearing No.876495 dated 23.12.2009 for a sum of ₹33,000/-, which on presentation for encashment, was returned back dishonoured with the remarks 'Funds Insufficient'. Legal notices were served. When the amount was not paid, then the complaints were filed within time.

In connected cases, separate cheques were issued qua same transaction.

Learned JMIC, Ludhiana, after appreciating the evidence, convicted the accused-respondent under Section 138 of the Negotiable

Instruments Act and sentenced him to undergo simple imprisonment for a

period of six months along with fine of ₹2000/- and in default of payment to fine, to undergo simple imprisonment for a period of one month in each case. Appeals were filed by accused-respondent and learned Addl. Sessions Judge, Ludhiana, accepted the appeals vide impugned judgments dated 09.10.2015 and acquitted the accused-respondent.

Aggrieved from the judgments dated 09.10.2015 passed by learned Addl. Sessions Judge, Ludhiana, present applications seeking to leave to appeal have been filed.

I have heard learned counsel for the applicant and have gone through the record, especially the judgments passed by the Courts below.

From the record, I find that learned lower Appellate Court, on the basis of evidence produced by the parties, found that as per statement of account produced by the complainant himself, which is Ex.C5 on the record, on 23.12.2009, a sum of ₹6,41,000/- was payable by the complainant to the accused. As per the balance-sheet, it is clear that even on 25.01.2010, a sum of ₹2,65,000/- was payable by the complainant to the accused, meaning thereby, there is no debt and liability towards the accused in discharge of which, the cheque in question was issued. These findings are correct and as per evidence. The evidence has been appreciated in right perspective.

Learned counsel for the applicant has not argued on document Ex.C5, which means that on the date of issuance of the cheque, there was no existing liability, in discharge of which, cheque in question was issued. Rather, complainant is to pay more than ₹6 lakhs to the accused on that date. In connected cases i.e. CRM No.A-679-MA of 2016, having same facts, qua same liability, cheque dated 16.10.2009 of ₹3,50,00/- and in CRM

issued. It is clear that when these cheques were issued, at that time, there was no liability for which the same were issued. Rather, even on the date of issuance of the cheque or afterwards i.e. on 23.12.2009, the complainant was to make payment to the accused of more than ₹6 lakhs. Therefore, these cheques were not issued in discharge of any liability by the accused to the complainant and even if in other two cases, at that time, there was any liability, even then, before the issuance of the legal notice qua those cheques, the amount has already been paid, rather, complainant was to pay the money to the accused on 23.12.2009.

From perusal of the reasonings given by learned Addl. Sessions Judge, Ludhiana after re-appreciating the evidence, I find that the findings given by learned lower Appellate Court while acquitting the accused-respondent are correct, as per law and evidence. The evidence has been re-appreciated in right perspective. 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. In no way, the findings given by learned Addl. Sessions Judge, Ludhiana, can be held as perverse or against the law.

In view of the above discussion, I find that the impugned judgments dated 09.10.2015 passed by learned Addl. Sessions Judge, Ludhiana, are correct, as per law and evidence and do not require any interference from this Court. No ground is made out to grant permission for leave to appeal and therefore, the present applications stands dismissed.

September 19, 2018

Vgulati

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No