

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1634-MA of 2015

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Date of decision:3.8.2018

M/s Priknit Retails Ltd. through its Merchandiser Rajiv Kanwar
...Applicant

v.

Manju Sumani
...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Aalok Jagga, Advocate for the applicant.

Mr. Vishal Sharma, Advocate for the respondent.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Manju Sumani-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 24.2.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed and the accused-respondent has been acquitted of the charge as framed against her.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 24.2.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, which is likely to

succeed on the grounds mentioned therein. It has been stated that the concept of security cheque has been misconstrued by the learned trial Court. It has been mentioned that learned trial Court has erred in not appreciating that such cheques are enforceable cheques even under Section 20 of the NI Act, as these cheques are called inchoate instruments, where the accused has admitted execution and handing over of the cheques with the implied authority to other complainant to even fill up the cheques and present the same at a future date in case if the amount is not returned by the accused. Therefore, it has been prayed that this application seeking leave to file appeal be allowed.

Notice of motion has been issued in this case.

Mr. Vishal Sharma, learned Advocate has appeared on behalf of the respondent and contested this application.

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

From the record, I find that M/s Priknit Retails Ltd. through its merchandiser Rajiv Kanwar-complainant filed complaint against Manju Sumani, proprietor of Smart Fashions under Section 138 of the NI Act. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Ludhiana, in her judgment dated 24.2.2014 are as under:-

“Brief facts leading to the present litigation, put forth by the complainant are that the accused is a proprietor of her concern and looking after the day to day business of her concern and is liable for every act and omission done by her. The complainant

appointed the accused as brand franchise on 19.03.2008 and allowed to retail all “Priknit Brand Hosiery Goods on Commission basis”. The accused was to remit the amount to the complainant immediately or daily basis or alternate day on the sale. But the accused failed to comply with the condition. The representative of the complainant visited to the accused a number of times and requested to pay the due amount and on repeated demand by the complainant, accused in order to partial discharge of her legally enforceable liability issued cheques bearing No.534975, dated 19.04.2010 for Rs.5,00,000/-, cheque bearing No.534976, dated 19.04.2010 for Rs.5,00,000/-, cheque bearing No.534977, dated 19.04.2010 for Rs.5,00,000/- drawn on Bank of Baroda, Chittorgarh Branch, in favour of the complainant with the assurance that the said cheque was issued at the time of presentation.

3. At the time of issuance of these cheques the accused assured the complainant that these cheques be encashed and accordingly firstly the complainant presented the cheques in his account with i.e. Bank of Baroda, Ludhiana but the said cheques were dishonoured on dated 17.05.2010 with remarks “Payment stopped by Drawer” thereafter the complainant got served a legal notice to the accused with registered AD/UPC on dated 03.06.2010 through his counsel, calling upon the accused to make the payment of the cheques amount. The accused has

received the legal notice but neither the accused replied it nor made the payment of the cheques amount. Hence the present complaint.”

The complainant Rajiv Kanwar Merchandiser of M/s Priknit Retails later on substituted by Sh. Sandeep Parmar, himself stepped into the witness box as CW-1 and tendered into evidence his duly sworn affidavit Ex.CA along with documents and closed his evidence.

At the close of evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the prosecution evidence against her but she denied the correctness of the evidence and pleaded herself as innocent. She also stated as under:-

“Complaint is false. In fact accused firm M/s Smart Fashions got the franchises of the complainant firm as per the agreement dated 19.03.2008. The lock in period of agreement was 6 years. At the rate of 22% commission of Rs.60,000/- per month minimum guarantee payment, whichever is higher, was settled between the complainant and the accused. Rs.7,00,000/- as security deposit refundable and Rs.30,000/- non-refundable was deposited along with three cheques in question undated Rs.5,00,000/- each drawn on Bank of Baroda, Chittorgarh Branch, as per the terms of the agreement. Showroom of the accused firm was inaugurated on 29.06.2008. Complainant firm was not sending the goods to the accused firm on time and as per requirement. Amended agreement was again written

between the parties and it was settled that complainant firm will pay 5% commission besides Rs.40,000/- per month minimum guarantee payment with effect from 12.01.2009.

On 12.01.2009 complainant firm wrote letter Ex.D.2 to the accused firm leveling false allegations and denied minimum guaranteed payment of Rs.40,000/- per month without any reason. Accused firm denied their allegations and put forth its stand. On 01.09.2009 accused firm again denied the minimum guarantee payment and told the accused firm to work on only 18% commission vide letter Ex.D.5. Accused firm replied on 18.11.2009 vide Ex.D.6 and told the complainant firm that she is not willing to continue without the minimum guarantee payment of Rs.40,000/- and further told to send their auditor to clear the account. Accused firm also send legal notice dated 12.03.2010 mentioning therein not to use the undated cheques in question and to send the final account. A letter was also written to the bank to stop the payment of the cheques in question vide letter dated 03.03.2010. Complainant firm never send the auditor or account statement and misused the undated cheques in question lying with them. It is pertinent to mention here that the amount of Rs.20,16,613/- was in the bank account of the firm and the cheques had been returned by the bank on account of stop payment.”

It is settled law that there is presumption in favour of holder of the

cheque which is issued by the accused, but at the same time this presumption is rebuttable and the accused can rebut the presumption by raising the probable defence.

In the present case, the accused and the complainant are litigating regarding the business transactions between them and the accused also issued a legal notice dated 12.3.2010 not to use the undated cheques. Even a letter was written to the bank on 3.3.2010 for stopping the payment of the cheques in question. When already a legal notice was sent by the accused and the bank was stopped from issuing the payment and from encashing the cheques then how the accused is supposed to issue the cheques on 19.4.2010. There is no case of the complainant that these cheques were given as post-dated cheques. Rather, it is the case that on repeated demands raised by the complainant, the accused in order to partially discharge her legally enforceable liability issued the cheques. The version of the complainant is probable one and has been duly supported by the documentary evidence. The cheques, which were lying with the complainant have been misused but in the complaint nowhere it is the case of the complainant that these cheques were already with them and they had filled it nor the case is that these post-dated cheques were given to the complainant. Therefore, the accused had already told the complainant not to use the blank signed cheques. Hence, the version given by the complainant in the complaint that the cheques were given on 19.4.2010 cannot be believed. The presumption has been duly rebutted by the accused by raising the probable defence which is duly supported and corroborated by the

defence evidence.

I have gone through the record and especially the impugned judgment of the learned Judicial Magistrate Ist Class, Ludhiana, and find that the findings given by the Court below are correct as per evidence and law and, in no way, these findings can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. The findings have been given by the Court below after appreciating the evidence in right and proper perspective.

Therefore, from the above discussion, the findings given by the learned trial Court are correct as per evidence and law and do not require any interference from this Court.

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.

August 3, 2018.

(Inderjit Singh)
Judge

hsp

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