

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

CRM No.A-1738-MA of 2014 (O&M)

Date of decision: November 29, 2018

M/s Hari Om Carpets

...Applicant

Versus

Khushi Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Prashant Chauhan, Advocate
for the applicant.

Mr.Abhinav Sood, Advocate for
Mr.Vikram Singh, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-M/s Hari Om Carpets has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Khushi Ram, challenging the impugned judgment dated 23.07.2014 passed by learned Judicial Magistrate Ist Class, Panipat, 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 if the application is not entertained, then the applicant would suffer irreparable loss, which would not be compensated later on. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant M/s Hari Om Carpets through

its proprietor Narender Kumar filed a complaint against accused Khushi Ram under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the impugned judgment passed by learned JMIC, Panipat, are as under:-

“Briefly, the complainant has filed the present complaint against accused alleging that accused had also been coming over to the aforesaid address of the complainant at Kutani Road Panipat many times to Purchase the carpets and has purchased in lacs and has made payment in cash to the complainant. Hence, the accused created trust upon the complainant and the complainant has good faith upon the accused. The accused gave an order to the complainant for supplying the carpet and the complainant sent the carpet two times of Rs.5,49,370/-. The complainant made the demand for payment and the accused issued the cheques bearing no. 050642 dated 18.8.2009 of Rs.1,49,340 and cheque bearing no.050643 dated 22.9.2009 of Rs.4,00,000/- and at the time of issuance of the cheques, the accused assured to present the said cheques for encashment in his banker. The complainant had presented the cheques bearing no.050642 dated 18.8.2009 of Rs.1,49,340 and cheque bearing no.050643 dated 22.9.2009 of Rs.4,00,000/-in his banker Panipat for encashment, but the complainant was shocked when he received memo dt. 19-8-2008 and 23.9.2009 from his banker, with remarks “Funds Insufficient” and “Amount differs in words and figures”. The present dishonoured cheques are conclusive proof of legal liability of accused. Since all personal requests made by the complainant failed to persuade the accused to release such amount. The complainant has served a legal notice upon accused dt. 14.10.09 through his counsel and demanded the amount of aforesaid cheques within 15 days of the receipt of legal notice through regd. A.D. Despite of the knowledge of the legal notice, the accused neither made the payment of above said dishonored cheques nor gave any reply of the same within the stipulated period and the stipulated period has been spoiled. Hence, this complaint.”

The complainant examined CW-1 Narender Kumar. At the close of 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 and pleaded his

innocence. In defence, accused examined himself as DW-1, DW-2 Raman Jain, DW-3 Rajbeer, DW-4 Ramesh Kumar, DW-5 ASI Shamsheer Singh and DW-6 Bharat Bhushan and tendered some documents.

Learned JMFC, Panipat, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 23.07.2014.

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 respondent 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 record, I find that first of all, no date, month and year has been mentioned as to when the carpets have been supplied, how much carpets have been supplied and who received the same. There is no document on record of any type to show transaction regarding the carpets. The accused has raised specific defence that he has nothing to pay to the complainant. There is no dispute that cheque in question bears his signatures but as per accused, the complainant stole the impugned cheque and has misused the same by presenting it in the bank. In fact, accused and complainant were indulged together in business of chit fund and after that they also worked together in job/work of carpet. During that period the complainant stole his signed cheque and misused the same. Accused had nothing to pay to the complainant rather it is the complainant who has to

pay ₹29,098/- to the accused.

The perusal of the record shows that complainant has failed to produced any type of document to prove the supply of carpets to the accused. The complaint has been filed by M/s Hari Om Carpets and firm is supposed to maintain the account books but no account book nor any bill nor any other document regarding receipt of carpets by accused etc. has been produced on record.

The accused has proved the document Ex.D2 by examining attesting witness DW-3 Rajbeer and its scribe DW-4 Rakesh. DW-4, Rakesh has deposed that Narender and Ex-Sarpanch has signed the document in his presence and the document Ex. D2 has been written by him. DW-3 Rajbeer has deposed that on 23.8.2009 when the compromise was effected then no matter regarding cheque was in dispute. It is admitted that a writing took place on 23.08.2009 but the cheque in question is dated 18.08.2009. There is mention of one cheque of ₹1,49,340/- but there is no mention regarding the cheque in question in the compromise, which was effected later on, after the issuance of the cheque. If there would have been any cheque with the complainant, then this might have been mentioned in the compromise. This fact further supports the defence version.

The defence raised by the accused is probable one, which is supported and corroborated by the defence evidence as well as case of the complainant itself. The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence and in the present case, presumption has been duly rebutted by raising probable defence by the accused. There is no evidence on record to show the transaction regarding the carpets and no account book has been produced.

The perusal of the findings given by learned Court below

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-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 23.07.2014 passed by learned JMIC, Panipat, 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.

November 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No