

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

CRM No.A-1978-MA of 2015 (O&M)

Date of decision: August 20, 2018

M/s Anil Trading Company

...Applicant

Versus

Mohan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Aayush Gupta, Advocate
for the applicant.

Mr.Sachin Mittal, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-M/s Anil Trading Company has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Mohan Lal, challenging the impugned judgment dated 10.11.2015 passed by learned Judicial Magistrate Ist Class, Kurukshetra, 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, therefore, prayed that leave to appeal be granted.

As per the record, complainant M/s Anil Trading Company filed a complaint against accused Mohan Lal under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused had

issued cheque No.565033 dated 18.11.2013 amounting to ₹6,07,715/- in favour of the complainant in order to discharge his debt outstanding against him, which on presentation for encashment, was returned back with the remarks 'Funds Insufficient'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

Learned JMIC, Kurukshetra, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 10.11.2015.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of motion 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.

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.

Further, from the record, especially from the findings given by learned trial Court, I find that complainant was running a commission

agency and accused is a small farmer, who used to sell his crop to the

complainant. J-forms are attached as Ex.D1 to D16, which show that accused was selling his crops. The case of the accused is that complainant has obtained two blank signed cheques from him and false complaint has been filed.

The perusal of the record shows that no document has been produced by the complainant having signatures of the accused nor any entry has been shown regarding outstanding amount. It is also on the record that accused has executed an agreement to sell in favour of the complainant but no sale consideration was received by the accused as the agreement was executed as security and this agreement was stated to be executed on the persuasion of the complainant.

From the perusal of the record, I find that complainant is a commission agent, therefore, he might be maintaining the record but he has not produced any record on the file. Furthermore, the perusal of the cheque shows that it was not filled by the accused, which also lends support to the defence version.

I have also gone through the cross-examination of the complainant as CW-1 in the lower Court record. The complainant failed to explain the liability of respondent. He stated that it is correct that he has no proof with him on that day to show that he is to take ₹6,07,715/- from the accused Mohan Lal. He also stated that he did not know on which date he has given how much money to the accused. He admitted that Mohan Lal used to sell his crops on his shop and that money is used to be deposited with him. He also admitted regarding scribing of agreement dated 16.03.2010 Ex.D17. The complainant also admitted that another agreement

admitted regarding agreement dated 16.03.2012, which was regarding land of Mohan Lal accused. This cross-examination shows that complainant got executed three agreements to sell only for the purpose of security from the accused, which further supports the defence version that cheques were also obtained by the complainant as security.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted from the case of the complainant also. The accused has rebutted the presumption by produced defence evidence as well as from the case of complainant.

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-respondents have 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 10.11.2015 passed by learned JMIC, Kurukshetra, 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.

August 20, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No