

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

CRM No.A-289-MA of 2015 (O&M)

Date of decision: October 23, 2018

Surya Pharmaceuticals Ltd.

...Applicant

Versus

M/s Nikom Pharma Marketing Private Ltd.

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Aditya Sanghi, Advocate
for the applicant.

Mr.Ashwani Arora, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Surya Pharmaceuticals Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent M/s Nikom Pharma Marketing Private Ltd., challenging the impugned judgment dated 12.08.2014 passed by learned Judicial Magistrate Ist Class, Chandigarh, 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 Surya Pharmaceuticals Ltd. through its authorized signatory Amit Gupta filed a complaint against accused M/s Nikom Pharma Marketing Private Ltd. through its Director and

Sh.Jhayant Mirani under Section 138 of the Negotiable Instruments Act. As per complainant's version, it is engaged in the business of manufacturing of medicines and their export. Accused approached the complainant company for the supply of goods and company agreed for the same on payment. The total outstanding amount against the accused company as on 31.03.2012 is more than ₹5 crores. In partial discharge of the liability, accused issued cheque No.326461 dated 13.03.2012 amounting to ₹5 crores, which on presentation for encashment, was returned back dishonoured with the remarks 'Account blocked'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined CW-1 Vipin Dureja, who tendered documents Ex.C1 to C9. He further stated that he is working in the complainant company since June, 2011. He is aware as to business relations between the complainant and the accused. There were two agency agreements executed between the parties. The first agreement was executed on 01.04.2008, Ex.R1 and the same was renewed on 10.04.2009 Ex.R2 and the earlier agreement Ex.R1 was superseded. He further admitted that a cheque of ₹5 crores was taken from the accused in terms of Ex.R2. The accused company was an agent of the complainant company for supply and distribution of its products and was also responsible for payments from the persons to whom goods were supplied through it. He also deposed that sometimes the payments were received by the complainant company directly and sometimes through the accused. This witness further deposed that accused company was working on commission basis. The due amount was orally demanded from the accused prior to issuance of the said notice

Amit Mittal was working in the marketing division of the complainant company. He also admitted that the said cheque is a security cheque in pursuant to the agency agreement Ex.R2 and quarterly review of the business transactions between the complainant and the accused never took place in pursuant to the agency agreement Ex.R2.

At the close of complainant evidence, the accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the complainant and they denied all the incriminating evidence against them. Accused Jhayant Mirani also pleaded that he had issued the said cheque towards security for renewal of agency agreement and not against any debt or liability. He had replied the said notice and had also filed a complaint against the complainant before CMM, Mumbai, wherein notice has been issued to the complainant. He had no liability towards the complainant rather the complainant is liable to pay his commission and has filed the present complaint just to escape from its liability. The said cheque was received by Amit Mittal, Sr. Manager of the complainant company on 11.07.2011, sent through letter dated 08.07.2011. The said cheque was undated and was a security cheque meant for renewal of agency agreement. The complainant never demanded any money either orally or in writing and have never sent any notice qua the same. In defence, accused examined DW-1 Amit Mittal, who admitted regarding receiving of letter from accused No.2 on 08.07.2011 along with undated security cheque of ₹5 crores for renewal of agency agreement. He also admitted that he has written a letter of thanks to the accused Ex.D1. The agency agreement was never renewed and the said cheque has been misused by the complainant. The accused company

company is to recover its commission from the complainant company. He further deposed that he joined the complainant company in year 2006 and left in year 2012. This witness also deposed regarding agency agreements Ex.R1 and Ex.R2

Learned JMIC, Chandigarh, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 12.08.2014.

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.

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.

The perusal of the record shows that complainant has not produce on the record any bills, vouchers or any document to show the supply of goods. No particulars have been mentioned in the complaint that

any vehicle record has been produced showing the delivery of the goods to the accused. As per the allegations, the complainant is to take more than ₹5 crores from the accused but no single document has been produced to show signatures of the accused regarding receiving of goods etc. Secondly, only *rokar bahi* has been produced, which is a computerized document. It does not show any payment during the said period by the accused of any type. Only commission of about some lakhs has been shown adjusted in the amount. Moreover, much reliance cannot be placed on copy of the *rokar bahi* as it is complainant's document in his own favour. Learned trial Court held that no document to show the liability has been produced by the complainant.

Further, I find that accused raised defence, which is probable one and has been duly supported by the complainant witness as well as DW-1 Amit Mittal, who was employee of the complainant company at the relevant time and has deposed that this undated cheque of ₹5 crores has been received along with one letter by him for renewal of the agency, which has not been renewed and this cheque has been misused by the complainant company. DW-1 Amit Mittal has also proved document i.e. thanks letter Ex.D1, which he had written to the accused. Further, admission of the complainant witness regarding agency agreements Ex.R1 and Ex.R2 shows that the cheque in question was sent for renewal of the agency as there was a condition to give security cheque.

The defence raised by the accused is probable one and presumption has been duly rebutted, there being no cogent document to show the liabilities that cheque has been issued for discharge of liability and

also there being no document of any type to show delivery of goods and

their being no particulars in the complaint.

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-respondent has 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 12.08.2014 passed by learned JMIC, Chandigarh, 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.

October 23, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No