

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

CRM No.A-449-MA of 2014 (O&M)

Date of decision: August 06, 2018

M/s Shree Ramcides Chemicals Pvt. Ltd.

...Applicant

Versus

Peoples Chemicals & Fertilizers Pvt. Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Grover, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-M/s Shree Ramcides Chemicals Pvt. Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Peoples Chemicals & Fertilizers Pvt. Ltd. and R.V.Chowdhury, challenging the impugned judgment dated 14.01.2014 passed by learned Judicial Magistrate Ist Class, Bathinda, 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 applicant would suffer an irreparable loss, if permission to file the appeal is not granted. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant M/s Shree Ramcides Chemicals

against accused Peoples Chemicals & Fertilizers Pvt. Ltd. through its Directors and R.V.Chowdhury under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Bathinda, are as under:-

“The complainant has filed this complaint under Section 138 of Negotiable Instruments Act (hereinafter referred to as “Act”) on the averments that complainant is carrying business of sale and manufacturing pesticides and Chinta Mani Dhyani has been authorized to file the complaint. The accused had been purchasing pesticides from the complainant on credit basis and in discharge of his legal liability accused issued cheque No.933676 dated 9.3.2009 for Rs.1 lac drawn on State Bank of Saurashtra, Lucknow and cheque No.487809 dated 9.3.2009 for Rs.2.5 lacs drawn on State Bank of India, Lucknow. The accused promised the complainant that cheques will be honoured on presentation and complainant reposed confidence on accused and accepted the said cheques. It is contended that complainant presented the said cheque with Oriental Bank of Commerce, Bank Street Branch, Bathinda and cheques were returned dishonoured for reasons 'insufficient funds' vide memo dated 28.3.2009. The complainant got issued legal notice dated 7.4.2009 through Sh.Gursewak Singh Chugh, Advocate, Bathinda to pay the cheque amount to the complainant, but the accused failed to make the payment within stipulated period and hence the present complaint.”

The complainant examined its attorney Chinta Mani Dhyani as CW-1, who tendered his affidavit Ex.CW1/A and closed the evidence. At the close of complainant evidence, the accused were examined under Section 313 Cr.P.C and they were confronted with the evidence of the complainant. They denied the correctness of the evidence and pleaded false implication. Accused R.V.Chowdhury, further stated as under:-

“He further stated that he never came to Bathinda for any business with the complainant nor issued any cheque to the complainant at Bathinda. He used to purchase the material from Shri Ramcides Chemical Pvt. Ltd., Ghaziabad (UP) through transport. On 18.11.2008 Sh.Gopal Avasti, sale

representative of Shri Ramcides Chemical Pvt. Ltd., Ghaziabad obtained two security cheques from the accused at Lucknow with promise that the same will be presented in the bank after confirmation from the complainant. The complaint has been filed by the complaint without any jurisdiction. He further stated that he was not having any dealing with Bathinda branch at any time.”

In defence, accused examined DW-1 Chander Shekhkar, who stated that he is posted as Officer Manager with the accused firm since August, 1995. Accused firm used to purchase material from Shri Ramcides Chemical Pvt. Ltd., Ghaziabad and pay the amount to said office. He further stated that Gopal Awasti used to obtain orders from the accused firm and supply the goods through transport at Lucknow and cheques Ex.C45 and Ex.C46 were given to Gopal Awasti as security at Lucknow in his presence and identified his signatures on Mark DX. This witness further produced rate lists Mark D1 and Mark D2 supplied by Gopal Awasti, Mark D3 and Mark D4 copies of 'Bilties'. He further deposed that Gopal Awasti left the job of complainant company and accused issued NOC (Mark D-5) to him on 11.6.2010. DW-1 also deposed that accused firm never purchased any material from Bathinda office nor made any payment to Bathinda office.

Learned JMIC, Bathinda, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 14.01.2014.

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

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

From the perusal of the record, I find that the attorney, who

appeared for the complainant admitted in his cross-examination that there is no manufacturing unit of complainant company at Bathinda. The sale of items to the accused firm were made through Gopal Awasthi, sale representative of complainant company. He also admitted that the material sold to the accused was not sold from Bathinda branch nor any material was sent to accused from Bathinda branch. He further admitted to be correct that bills Ex.C3 to Ex.C41 do not bear his signatures and he also could not identify the signatures of some Sunil Singh, Mahipal Singh and Umesh, who had issued these bills to the accused. This cross-examination, firstly shows that bills have not been proved as per law. The attorney of the complainant failed to tell as to who has issued the bills. Secondly, the attorney admitted the defence raised by the accused that he had never came to Bathinda nor has any dealing at Bathinda. Rather, he was dealing through Gopal Awasthi, sale representative of the company at Ghaziabad. Further, CW-1 Chintamani Dhyani also showed ignorance to the fact that on 18.11.2008 sale representative Gopal Awasthi obtained the disputed cheques from the accused under receipt Mark DX. He also did not identify the signatures of Gopal Awasthi.

The Court below held that sale transaction have been held in Lucknow through one Gopal Awasthi and bills have not been issued by Bathinda Branch and all these facts, support the defence version. It is further held by the Court below that CW-1 Chinta Mani Dhyani does not have any knowledge of business transaction taken place between complainant company and accused as is evident from this cross-examination.

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.

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 view of the above discussion, I find that the impugned judgment dated 14.01.2014 passed by learned JMIC, Bathinda, 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 06, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No