

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

**CRM No.A-572-MA of 2014 (O&M)
Date of decision: December 03, 2018**

M/s Amar Tyres

...Applicant

Versus

Brij Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Kewal Krishan, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-M/s Amar Tyres has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Brij Lal, challenging the impugned judgment dated 19.10.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, 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 Amar Tyres through its proprietor Kuldeep Singh Bedi filed a complaint against accused Brij Lal under Section 138 of the Negotiable Instruments Act. As per complainant's version, accused purchased tyres from the complainant vide bill No.3154 dated 08.05.2011 for ₹1,61,000/- and in order to discharge the legal

liability, the accused issued cheque bearing No.539419 dated 08.05.2011 for

₹1,61,000/- in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'Account is Dormant'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined CW-1 Kuldeep Singh Bedi, who tendered into evidence documents; cheque Ex.C1, memo Ex.C2, legal notice Ex.C3 and postal receipt Ex.C4. 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. The accused took the defence that he never purchased any goods or tyres on credit. He used to make purchases from the complainant on cash payment and never purchased on credit. The cheque in question has been misused falsely by the complainant. The blank cheque duly signed by him was issued to the complainant for the purpose of tyres but the complainant failed to supply the tyres as the same were not available in his stock and he promised to supply the same later on, as and when, available but he never supplied the tyres nor he returned the blank cheque. When he requested the complainant to return the cheque, he said that blank cheque is of no use for him and accused believed the complainant but later on, the complainant filled the blank cheque himself and misused the same for his wrongful gains. In defence, accused examined himself as DW-1.

Learned JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 19.10.2013.

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 in the present case, admittedly, cheque is signed by the accused but the accused has raised probable defence that he has given the blank signed cheque to the complainant for supply of tyres and the blank signed cheque has been misused by the complainant. The perusal of the record shows that there is no document on record to show this transaction. The complaint has been filed by the complainant-firm, which is supposed to maintain the account books but no account book has been produced to show the liability or any record regarding supply of the tyres to the accused. Before, learned trial Court, not even any bill has been produced. There is no document of transportation of the tyres nor there is any receipt regarding the delivery of the tyres. No *rokar bahi* or cash book has been produced on the record to show this transaction, which fact supports the defence of the accused that tyres were not supplied to him and blank signed cheque has been misused. Otherwise also, no explanation has been given as to why account books have not been produced. It is also not the case of the complainant that no account books are maintained by the firm. In these circumstances, 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.

filed criminal misc. application for leading additional evidence and wants to produce the bill in question. When asked, whether the bill was signed by the accused, the answer was in negative. Even if, this additional evidence is allowed, this bill will be treated as one's document in his own favour. Otherwise also, such type of document can be prepared at later stage. Therefore, much, reliance cannot be placed on the additional evidence, which the complainant wants to produce.

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 19.10.2013 passed by learned JMIC, Ludhiana, 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.

December 03, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No