

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

CRM No.A-598-MA of 2017 (O&M)

Date of decision: September 19, 2018

M/s Sobhagya Petro Services

...Applicant

Versus

Dhoop Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Kumar, Advocate for
Mr.Vikram Singh, Advocate
for the applicant.

Mr.R.S.Budhwar, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-M/s Sobhagya Petro Services has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Dhoop Singh, challenging the impugned judgment dated 07.01.2017 passed by learned Judicial Magistrate Ist Class, Karnal, 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 Sobhagya Petro Services through its authorized signatory Baljit Singh filed a complaint against

accused Dhoop Singh under Section 138/142 of the Negotiable Instruments

Act. As per complainant's version, M/s Sobhagya Petro Services is owned by Satish Kumar, who is running a petrol pump and has authorized Baljit Singh to file complaint against the accused. Accused used to purchase diesel from the complainant from time to time on cash and credit basis and maintained an account with the complainant and used to acknowledge the same by putting his signatures. On 10.03.2015, complainant settled the account of the accused and in discharge of this legal liability, accused issued a cheque bearing No.010085 dated 10.03.2015 for a sum of ₹2,36,290/- in favour of the complainant, 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.

The defence of the accused is that he had issued a blank security cheque to the complainant and he has misused the cheque. He further stated that he has no legal liability towards the complainant as alleged in the complaint.

Learned JMIC, Karnal, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 07.01.2017.

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.

Learned trial Court, after appreciating the evidence, found that as per case of the complainant, after settling the account on 10.03.2015, an amount of ₹2,36,290/- was outstanding against the accused for purchase of diesel from complainant and it is in discharge of this liability, the accused has issued the cheque in question. The complainant has placed reliance upon documents Ex.C7 to Ex.C24, which are cash memos as well as bills respectively. On the other hand, accused has examined DW-1 Rambir Sharma, who produced the copy of ledger of accused prepared by the complainant qua sale/purchase of diesel, copy of which is Ex.D1. The Court found that there is difference between the entries of Ex.D1 with Ex.C7 to Ex.C24. The accounts were settled on 10.03.2015, whereas Ex.C7 is dated 24.03.2015, i.e. after the date of settling the accounts and the cheque is also dated 10.03.2015. Ex.C7 is dated 24.03.2015, therefore, it cannot be considered after the issuance of the cheque. The Court further held regarding Ex.C12, that there is no entry in Ex.D1. Learned trial Court after matching the entries found that there are so many documents regarding which there is no entry in Ex.D1. It is also held that Ex.D1 and Ex.C7 to

transactions of the accused only and if the amount is calculated, remaining amount of receipts comes to ₹1,73,179/- only, which is less than the cheque amount. DW-1 Rambir Sharma also stated that amount of ₹1,79, 070/- is only outstanding against the accused as per Ex.D1.

Complainant has given legal notice to pay an amount of ₹2,36,290/- qua which there was no liability outstanding against the accused. Learned trial Court, in view of the variation in the record of the complainant, found that presumption has been duly rebutted, the cheque amount was not due and legal notice is of more amount than actually payable.

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 07.01.2017 passed by learned JMIC, Karnal, 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.

September 19, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No