

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

CRM No.A-652-MA of 2015 (O&M)

Date of decision: July 31, 2018

M/s Manohar Lal Aggarwal and sons

...Applicant

Versus

Manjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sham Lal Bhalla, Advocate
for the applicant.

Ms.Kulwinder Kaur, Advocate for
Mr.Arvind Kashyap, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-M/s Manohar Lal Aggarwal and sons has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Manjit Singh, challenging the impugned judgment dated 09.12.2014 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, 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 Manohar Lal Aggarwal and sons filed a complaint against accused Manjit Singh under Section 138 of

purchased pesticides, seeds and fertilizers from the complainant on different dates and incurred liability of ₹1,06,032/-. To make payment and to discharge legal liability, accused issued a cheque of ₹1,10,000/- in favour of complainant, which on presentation for encashment, was returned back with the remarks account closed. When the complainant issued legal notice, then accused assured that he would make the payment with interest and issued cheque No.009731 dated 02.01.2012 for amount of ₹1,50,000/-, which on presentation for encashment, was again returned back dishonoured. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C and he was confronted with the evidence. He denied all the incriminating evidence against him and pleaded false implication. The accused tendered into evidence ration card of his father & brother as Ex.A1 and certified copy of his ration card as Ex.A2.

Learned JMIC, Fatehgarh Sahib, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 09.12.2014.

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.

The perusal of the record shows that as per account books produced by the complainant, bills amounting to ₹40,000/- have been proved, which directly pertains to the accused. Other bills have been signed by brother of the accused. The Court below held that even if it is presumed that goods of ₹60,000/- were taken by brother of accused on behalf of the accused, even then, the complainant had to prove other impending liability of ₹44,000/- qua the cheque amount but the complainant failed to prove the same despite producing the account books. The complainant himself admitted in his cross-examination that the cheque in question was given to him as blank. This admission of filling the cheque by the complainant himself makes it incumbent upon the complainant to prove that there was pre-existing liability upon the accused. When a blank signed cheque is given by the accused, the complainant has right to fill it up and there is no illegality in filling the cheque but when the complainant is producing the record, and rather in the complaint, himself stated that liability against the accused was of ₹1,06,032/-, then how he can fill the amount of ₹1,50,000/- and legal notice was also issued to pay this amount, which was excess amount. Otherwise also, as already discussed, bills pertaining to accused

put upon the accused without any cogent documentary evidence.

Keeping in view the above facts, I find that presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted.

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 09.12.2014 passed by learned JMIC, Fatehgarh Sahib, 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.

July 31, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No