

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

CRM No.A-1005-MA of 2018 (O&M)

Date of decision: January 15, 2019

M/s Richa Industries Limited

...Applicant

Versus

M/s Sakshi Lingeries Pvt. Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Balkar Singh, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-M/s Richa Industries Limited has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against M/s Sakshi Lingeries Pvt. Ltd. and other respondents, challenging the judgment dated 07.03.2018 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby accused-respondents were 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 Richa Industries Limited filed a complaint against accused M/s Sakshi Lingeries Pvt. Ltd., Pawan Kumar Gupta, Prateek Gupta and Geeta Gupta under Sections 138, 141 and

complaint as noted down in the judgment passed by learned JMJC, Faridabad, are as under:-

“The present complaint has been filed by the complainant under Section 138 of Negotiable Instruments Act on the ground that complainant is a limited company registered under the provisions of Companies Act, 1956 and is engaged in the business of dyeing, bleaching, processing and sale of fabrics etc. Accused No.1 is a private limited company and accused no. 2 to 4 are the director and authorized signatory of accused No.1 and are actively engaged in day to day affairs of accused No.1. It is alleged that accused No.1 has placed orders through accused No. 2 to 4 for purchase of fabric and complainant company has sold the fabric to the accused and receipt of the same is duly confirmed by the accused. It is further alleged that accused persons gave following cheques (for short “cheques in question”), as a payment for fabric in favour of the complainant that are:

Sr.No.	Cheque No.	Date	Amount	Drawn on
1	821192	06.10.2015	Rs.3,91,225/-	ICICI Bank
2	821194	06.10.2015	Rs.4,04,298/-	Do
3	841626	06.10.2015	Rs.5,00,000/-	Do
4	841627	06.10.2015	Rs.3,00,000/-	Do
5	841674	10.07.2015	Rs.3,01,147/-	Do
6	841676	20.07.2015	Rs.5,00,000/-	Do
7	841677	25.07.2015	Rs.5,00,000/-	Do
8	841678	29.07.2015	Rs.6,01,294/-	Do

Accused has also assured the complainant that the said cheques will be honoured on their presentation. Further, as per the assurance of the accused, the complainant presented the above said cheques for encashment through its banker but same were returned back dishonoured with remarks of “Funds Insufficient” vide return memos dated 09.10.2015.

Thereafter, legal notice dated 23.10.2015 was issued to the accused calling upon him to make the requisite payment within 15 days. However, as per the version of the complainant, no payment was made by the accused and as such he filed the present complaint being within period of limitation. ”

On the basis of preliminary evidence, accused No.1 and 3 were summoned. The complainant examined CW-1 Pawan Sharma, Authorized

Representative of the company. In defence, accused did not examine any witness. The accused took the defence that cheques in question were issued in favour of the complainant for security purpose. Accused have no legal liability qua the cheques in question. The complainant has not produced any bill, invoice, ledger account on file to prove any liability of the accused.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 07.03.2018.

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

Lower Court record was also requisitioned.

I have heard learned counsel for the applicant 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 further shows that there are no particulars regarding liability that on which date, month and year, the fabric was supplied to the accused and through which mode, who received the articles etc. There is no document of any type to show the transaction

between the complainant and accused. The complainant is a private limited

company and maintaining the account books but no bill, invoice, order or any type of document has been proved on record. If the material was supplied, then, there must be some record with the complainant-company but no such record has been produced.

Furthermore, authorized representative Pawan Sharma was not knowing the facts of this case personally. Therefore, prima facie, complainant failed to show the liability. There is also nothing as to when the money was demanded back. There is no document to show any bill etc. containing signatures of the accused. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence which is supported and corroborated from the case of the complainant itself.

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-respondents have 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 07.03.2018 passed by learned JMIC, Faridabad, 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.

January 15, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No