

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

**CRM No.A-1628-MA of 2014 (O&M)
Date of decision: January 14, 2019**

M/s TRG Packaging Pvt. Ltd.

...Applicant

Versus

Viprav Jain and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Harsh Aggarwal, Advocate
for respondent No.1.

None for respondent No.2.

INDERJIT SINGH, J.

Applicant-M/s TRG Packaging Pvt. Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Viprav Jain and M/s Genius Aquatech, challenging the judgment dated 08.08.2014 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 TRG Packaging Pvt. Ltd. filed a complaint against accused Viprav Jain and M/s Genius Aquatech under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned JMJC, Faridabad, are as under:-

“1. M/s. T.R.G. Packaging Private Limited, through its authorized person Sh. Ghanshyam, the complainant, has filed the instant complaint under Section 138 of Negotiable Instruments Act (hereinafter referred as N.I. Act) alleging that complainant is the authorized person of M/s. T.R.G. Packaging Private Limited and is fully authorized to file complaint against the accused and to do anything regarding the matter in dispute. Accused No.1 is the proprietor/partner of accused No.2 M/s. Genius Aquatech and has been running business under the name and style of M/s. Genius Aquatech and is fully authorized to sign and verify the documents and cheques of the said firm. Accused had purchased the material/goods from the complainant. After acknowledging and admitting the liability of the sum due against the complainant, accused No.1 issued cheques from his firm M/s. Genius Aquatech in favour of complainant, which are cheque No.000313 dt. 23.11.2010 in the sum of ₹70,000/- and cheque No.000314 dt. 26.11.2010 in the sum of ₹87,834/-, both cheques drawn on Kotak Mahindra Bank Limited, Ground Floor, SCO-2, District Center, Sector-16, Faridabad (hereinafter referred to as the cheques in question). Accused gave assurance to the complainant that the cheques in question would be honoured on presentation. The complainant presented the cheques in question through his banker namely Union Bank of India, Sector-7, Faridabad in it's account but the same were received back as dishonoured on 24.11.2010 & 27.11.2010 due to 'Funds Insufficient'. Accused further requested the complainant to present the cheques in question again and assured that same would be encashed. Upon the assurance of the accused, the complainant further deposited the cheques in question in it's account, but again same were returned dishonoured on 28.1.2011 with the remarks 'Funds Insufficient'. Consequently, the complainant issued a legal notice dt. 5.2.2011 through registered A.D., but accused failed to make the payment of the cheques amount within the stipulated period of fifteen days of the receipt of legal notice. Hence, this complaint to set the criminal law in motion has been made.”

The complainant examined himself as CW-1 and proved

documents Ex.C1 to Ex.C11 i.e. authority letter, cheques, bank return memos, legal notice and postal receipts. At the close of complainant evidence, the accused Viprav Jain was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence. He further pleaded that cheques were issued to the complainant as material was supplied by the complainant to accused company. He also stated that a sum of ₹25,000/- has already been paid to the complainant out of the total cheque amount. The legal notice was received by accused company. He further pleaded false implication in this case.

Learned JMIC, Faridabad, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 08.08.2014.

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 respondent No.1 appeared and contested the application. No one appeared on behalf of respondent No.2 despite service.

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

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.

At the time of arguments, the fact regarding payment of ₹25,000/- by the accused after dishonoring of the cheque has been admitted by learned counsel for the complainant. He further admitted that complainant has received ₹25,000/-. It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, it has been duly proved that complainant demanded more money i.e. the cheque amount instead of due amount. Even in the complaint, there is no mention regarding payment of ₹25,000/- by the accused to the complainant after dishonoring of the cheque. As the complainant has demanded much money than the liability and filed the complaint also without mentioning this fact, therefore, accused has been rightly acquitted by learned Magistrate.

Learned counsel for respondent No.1 has relied upon the judgment passed by this Court in ***Ashok Kumar Garg vs. Mrs. Kamlesh Rani, 2016(4) Law Herald 2911***. I have gone through the above-cited judgment and the same fully applies to the facts of the present case.

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 08.08.2014 passed by learned JMIC, Faridabad, is correct,

Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

January 14, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No