

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

**CRM-A-1293-MA of 2017 (O&M)
Date of Decision: 30.1.2020**

M.L.Aggarwal Hosiery Private Limited

.....Applicant

Vs.

M/s Shivani Enterprises and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Manuj Nagrath, Advocate
for the applicant.

Mr. Salim Malik, Advocate for
Mr. D.D.Sharma, Advocate
for the respondents.

HARNARESH SINGH GILL, J.

The applicant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 6.4.2017, passed by Judicial Magistrate Ist Class, Ludhiana vide which the respondents were acquitted of the charge(s) framed against them.

A complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 ('Act' for short) was filed by the applicant-complainant alleging that the respondent-firm was having business dealing with the complainant and they used to purchase goods from the applicant-complainant from time to time on credit basis and a sum of Rs. 2,65,657/- was outstanding against them. Thus, in order to discharge

dated 10.6.2015 for Rs. 2,65,657/- drawn on Bank of India, City Centre Branch, Sangam Cinema Building, Amritsar. When the said cheque was presented for encashment, the same was received back unencashed with the remarks "*payment stopped by drawer*" vide memo dated 11.6.2015. Legal notice dated 6.7.2015 was issued by the applicant but the respondent did not make the payment.

After preliminary evidence, respondent was summoned under Section 138 of the Act. Notice of accusation under Section 138 of the Act was served upon the respondent to which he pleaded not guilty and claimed trial.

The complainant himself appeared in the witness box as CW-1 and tendered documents Ex. C-1 to C-14.

In the statement recorded under Section 313 Cr.P.C., the accused denied the allegations and pleaded false implication.

The trial Court has observed that the ingredients of Section 138 of the Act were not sufficiently made out against the accused and after taking into consideration the evidence on record, the complaint was dismissed and the respondent was acquitted of the charge framed against him.

I have heard the learned counsel for the parties and have gone through the record of the Court below with their able assistance.

Learned counsel for the applicant has argued that the complainant has been successful in proving the criminal liability of the respondent under Section 138 of the Act. He has further argued that the learned trial Court has not taken into consideration the documentary evidence Ex. C4, the ledger account of accused firm maintained by the

complainant, as per which an amount of Rs. 2,65,657/- was outstanding against the respondent, against which the cheque in dispute was issued but when the said cheque was presented for encashment, the same was dishonoured with remarks “payment stopped by the drawer”. Learned counsel has further argued that the amount of Rs. 1,53,321/-, duly credited in the account statement Ex. C4, was on the basis of depreciation as per Section 269 of the Income Tax Act and the entire transactions effected between the complainant and the accused, were duly shown by the applicant in his accounts books. He has placed reliance on ***Bir Singh versus Mukesh Kumar 2019 (2) R.C.R. (Criminal) 1.***

On the other hand, learned counsel for the respondents has argued that the cheque in question was never issued by the respondents in favour of the complainant in order to discharge any legal liability. He further submits that the document Ex. C4 did not bear the exact description of the accounts pending between the parties and till 30.4.2015, only Rs. 1,12,336/- was depicted in the balance outstanding against the respondent-firm however, the amount of Rs. 1,53,321/- has been wrongly added by the complainant raising the total to Rs. 2,65,657/-.

In the present case, the accused-respondent stepped into the witness box as DW-1 and stated that he had issued two blank signed cheques bearing No. 000227 and 000228 as a security to the complainant. The dispute between the parties arose for the first time qua security cheque No. 000227 which was amicably resolved. However, the cheque in dispute i.e. No. 000228 was also given by way of security and not towards any legally enforceable debt. The complainant also admitted that the cheque No. 000227 had been issued by the accused in his favour, but he did not

take any action with regard to the said cheque.

As per Ex. C4, the entry dated 20.5.2015 enumerated as “profit on sale of stock of Rs. 5,11,069/- @ 30%” and due to this, a sum of Rs. 1,53,321/- was debited to the account of the respondent raising the total balance amount to Rs. 2,65,657/- i.e. the cheque amount. The complainant in his cross-examination admitted that the parties did the business only upto 30.4.2015 and no written agreement was entered between them qua the depreciation of 30% on return of the goods. Further, the complainant had failed to produce his ITRs for the year 2015-2016 and also failed to examine his Chartered Accountant to show that the liability of the accused was shown by him in his income tax returns of the year 2015-2016. The respondent had been successful in proving that the cheque in dispute was issued as a security and thus successfully rebutted the existence of any legally enforceable liability against them. The complainant had failed to prove that there was any legally enforceable liability of the accused to the extent of Rs. 2,65,657/- towards the complainant.

Thus, in view of the totality of the circumstances and the settled position of law, the case attempted to be built by the complainant, appears to be suffering from fatal infirmities so much so that it goes directly to the root of the case and shakes the very edifice on which the case of the complainant rests. It is also relevant to mention here that the criminal conviction entails enigmatic and stigmatic exposures and experiences and thus it becomes of paramount importance to demand evidence of unimpeachable character and of unambiguous nature.

Therefore, considering the above mentioned facts and legal positions, it would not be unjustified and completely misplaced to say that

the complainant has miserably failed to prove if the impugned cheque has been issued against the discharge of any enforceable debt or liability. Preponderance of probabilities lies completely in favour of the accused. Further, the case of the complainant is required to rest on his own leg and the same cannot be allowed to be bypassed in a casual and cosmetic manner.

Learned counsel for the applicant, although, made sincere attempt, yet failed to draw the attention of this Court to any substantive error or perversity. Still further, the reasons which have been extracted above, appear to be probable and plausible.

From the above, I do not find any ground to grant special leave to file appeal. Therefore, finding no merit in the present application, the same is dismissed.

(HARNARESH SINGH GILL)
JUDGE

January 30, 2020
Gurpreet

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No