IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-1467-SBA of 2003
Date of decision : 04.02.2015

M/s The Creator

...Appellant

versus

Kuldeep Singh Cheema

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the appellant.

Mr. Samarth Sagar, Advocate,
for the respondent.

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RITU BAHRI , J.

Challenge is to the judgment dated 15.02.2002 passed by the Judicial Magistrate, Ist Class, Chandigarh, whereby accused-respondent has been acquitted of the offence under Section 138 of the Negotiable Instruments Act.

M/s The Creators-complainant, being Architect, offers services in the field of architectural designs, drawings, site survey, cost estimates etc. Respondent approached the complainant firm for preparing project report for a tourist resort at Una (Himachal Pradesh). Accordingly, the complainant prepared a project report. In order to discharge his liability, the accused-respondent issued a cheque bearing No.0899659 dated 15.11.1998 for a sum of Rs.2,50,000/- in favour of the applicant-complainant. However, on presentation, the said cheque was dishonoured vide memo dated 22.01.1999 with the remarks “insufficient balance” in the account of the accused-respondent. Thereafter, the appellant-complainant served a legal notice dated

10.02.1999, calling upon the accused-respondent to make payment of the cheque amount. But, the accused-respondents failed to make the payment. Hence, the complaint.

After conclusion of the trial, vide impugned judgment dated 15.02.2002, the trial Court dismissed the complaint filed by the complainant-appellant on the ground of maintainability. The trial Court has held that the complaint has been filed by the proprietorship firm in its own name, which is not competent to file the same, as proprietorship concern has no legal liability. The proprietorship firm cannot enforce its claim by way of civil suit and cannot file complaint under Section 138 of N.I. Act. Reference was made to the judgments delivered by the Madras High Court in ***B. Adarsh Rao Vs. M/s Tamil Nadu Electricals,*** Judgments on Dishonour of cheques 402 (Madras) and ***U.C. Saxena Vs. Madan Mohan,*** 1993 (3) RCR (P&H) 391.

Heard.

In the present case, the complaint has been initiated by a proprietorship firm through its sole proprietor Mr. C.P. Kaushal. This controversy has now been settled by the Hon'ble Supreme Court in ***Anil Hada Vs. Indian Acrylic Ltd.,*** 2000 (1) RCR (Criminal) 1. This decision was followed by the Hon'ble Supreme Court in ***R. Rajagopal Vs. S.s. Venkat,*** 2001 (3) RCR (Criminal) 347 and ***M.M.T.C. Ltd. and another Vs. Medichl Chemicals and Pharma (P) Ltd. & another,*** AIR 2001 SCW 4793.

Learned counsel for the appellant has argued that the case of the appellant-complainant was that it had offered services for making a project report for the respondent-accused with regard to a tourist resort at Una (Himachal Pradesh). Mr. C.P. Kaushal, proprietor of the complainant-firm (CWP-2) had admitted in his cross-examination that he had not prepared any project report in Una. He made enquiries on the land on which the resort was to be made.

Case of the accused-respondent was that he had purchased a Maruti car bearing No. PB-12-C-4641, for which, the appellant-complainant stood as a guarantor in his personal capacity. The said car was financed by M.G.f. India Ltd. This fact has been admitted by the complainant in his cross-examination. Further, as per the deposition of Sanjiv Sharma, Manager M.G.F., India Ltd. (DW-1), he had accepted 12 cheques from Mr. C.P. Kaushal proprietor of M/s The Creators. These cheques were given by Mr. C.P. Kaushal as installments of the loan, which were encashed by them. After encashment, there nothing due against the said loan.

A perusal of the record and the statement made by C.P. Kaushal (CW-2) shows that 10 cheques of Rs.8840/- were given to MGF India Ltd., which were cleared by the company. However, the complainant retained two cheques bearing Nos.0899659 and 0899660 of S.B.O.P. against his two cheques bearing Nos.188304 dated 15.12.1998 and 188305 dated 15.01.1999. Later on, the cheque in question i.e. cheque No.0899659, which was dishonoured, was filled with the amount of Rs.2,50,000/-. Filling up of the aforesaid cheque with an amount of Rs.2,50,000/- as fee for the project, which he never got prepared, will falsify the stand of the complainant. Mr. C.P. Kaushal (CW-2) has himself admitted that he did not prepare any project report for Una. He also admitted that he had stood guarantor of the accused-respondent for purchasing a Maruti car, which was financed financed from MGF India Ltd. The factum of loan has been further proved by Sanjeev Sharma, Manager, MGF India Ltd. (DW-1), who deposed that the Maruti car bearing registration No. PB-12-C-4641 was financed in the name of Kuldeep

Singh-accused (respondent) and Mr. C.P. Kaushal, Architect had introduced Kuldeep Singh in his office. He stood as guarantor for Kuldeep Singh and gave 12 cheques as guarantee/security for installments of the said car. As per the statement of account of Kuldeep Singh, Mr. C.P. Kaushal had given instructions to MGF India Ltd. that cheque Nos. 188304 and 188305 be encashed as installment of loan of Kuldeep Singh-respondent. After encashing the said cheques, there was nothing due against Kuldeep Singh. The cheques of Mr. C.P. Kaushal were still lying with the finance company. The complainant did not bother to cross-examine this witness on the question of grant of loan and standing surety for Kuldeep Singh.

A perusal of depositions of Mr. C.P. Kaushal (CW-2) and Sanjeev Sharma (DW-2) make it abundantly clear that the cheque in question had been retained by Mr. C.P. Kaushal to regulate installments of the car and it was not given by the accused towards preparation of any project for Una. The complainant had filled up the said cheque with an amount of Rs.2,50,000/- on 15.11.1998, which on presentation was dishonoured. Kuldeep Singh-respondent, who had taken a loan to purchase Maruti car, would not be in a position to give the cheque of Rs.2,50,000/- on 15.11.1998 to the complainant towards any business transaction. The complainant has failed to lead any evidence to show that the cheque in question was given by the respondent-accused on account of any fee for the said project. On the other hand, the respondent-accused had led sufficient evidence, which was admitted by the complainant while appearing as CW-2 that he had stood guarantor of the accused-respondent for the car loan, which was taken from MGF India Ltd.

After going through the impugned judgment, this Court is of the view that apart from maintainability of the complaint, there is no merits in the case of the complainant to show that the respondent-accused had any legal liability towards the complainant. There is no evidence on the record, which has been misread by the trial Court, which can lead to conviction of the accused-respondent.

Dismissed.

04.02.2015 **(RITU BAHRI)**
ajp **JUDGE**