IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 17.3.2015

CRR No. 1613 of 2013 (O/M)
Mrs. Kanwaljit Kaur Ahluwalia ...... Petitioner

Versus

State of Punjab and another ...... Respondents

CRR No. 1614 of 2013 (O/M)
Mrs. Kanwaljit Kaur Ahluwalia ...... Petitioner

Versus

State of Punjab and another ...... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Bipan Ghai, Senior Advocate, with,
Mr. V.S. Virk, Advocate, for the petitioner
in both the cases.

Mr. Nikhil K. Chopra, Deputy A.G., Punjab.

Mr. Arvind Bansal, Advocate, for respondent No. 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

-.- -.-

KULDIP SINGH, J.

This judgment will dispose of CRR No. 1613 of 2013 and CRR No. 1614 of 2013, titled as *Mrs. Kanwaljit Kaur Ahluwalia Versus State of Punjab and another,* preferred against two separate judgments dated 25.4.2013, passed by the learned Additional

Sessions Judge (Adhoc), Fast Track Court, Amritsar, in separate criminal appeals bearing Nos. RBT 104 of 2011/2012 and RBT 143 of 2011/2013 titled as *Mrs. Kanwaljit Kaur Ahluwalia and another Versus Golden Organics Pvt. Ltd.,* between the same parties under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act'), affirming the judgment and order dated 1.9.2011, passed by the learned Judicial Magistrate 1st Class, Amristar, in separate criminal complaints bearing Nos. 329 of 2002 and 499 of 2003, titled as *Golden Organics Pvt. Ltd. Versus Mrs. Kamaljit Kaur Ahuluwalia and others,* vide which accused/revisionist and her husband S.P. Singh Ahluwalia were convicted under Section 138 of the N.I. Act and sentenced to undergo rigorous imprisonment for two years each and to pay fine of Rs. 5,000/- each, in default thereof, to undergo further simple imprisonment for three months in each complaint. However, in appeal, the other accused i.e. S.P. Singh Ahluwalia (husband of the accused/revisionist) was acquitted of the charges framed against him, vide two separate judgments dated 25.4.2013, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar.

Common facts of the case are that the complainant-Company M/s Golden Organics Pvt. Ltd. entered into an agreement with concerns M/s Madhu Fabricators and M/s Alpha Consultants and Associates on 9th/12th of June, 2000 to instal formaldehyde plant at the premises of the complainant. Accused No. 1 Mrs. Kamaljit

Kaur Ahluwalia (wrongly mentioned as Kanwaljit Kaur Ahluwalia) is the proprietor of M/s Madhu Fabricators, whereas accused No. 2 S.P. Singh Ahluwalia, who happens to be the husband of accused No. 1, is the proprietor of M/s Alpha Consultants and Associates. Both concerns are stated to be the family concerns of the accused. Accused failed to instal the said plant in accordance with the terms and conditions of the said agreement. The machinery of the plant was not supplied within time. It was very slow and short supply of the machinery for installing the plant. Due to the fault of the accused, complainant suffered damages and financial losses. The complainant-Company even engaged the services of some other concern for installation of plant and machinery. The complainant wrote number of letters sent through U.P.C., requesting the accused to fulfill the terms and conditions of the agreement and instal the machinery within time. A letter dated 14.12.2001 (Ex.P3) was sent through U.P.C., requesting the accused to expedite the matter. Then, another letter dated 4.1.2002 (Ex.P10) was written, wherein it was stated that the complainant has suffered the damages. The details of the damages were claimed to the tune of Rs. 57.11 lacs. It was also mentioned that Rs. 80 lacs have been paid to the accused, but the machinery supplied to the complainant is of much lesser value i.e. only Rs. 25 lacs. Again, letters dated 21.1.2002, 10.4.2002 and 10.5.2002 were sent through U.P.C. Ultimately, accused No. 1 replied the said letters, vide registered letter dated

1.6.2002 (Ex.P26), in which accused had shown their inability to comply with the agreement dated 10/12.6.2000. It also acknowledged the letters above and also stated that the losses suffered by the complainant have been assessed by the accused at Rs. 40 lacs. It was requested that the terms of losses can be settled by sitting face to face. It was further stated that following cheques were enclosed with the registered letters :-

i) Cheque No. 246574 dated 10.6.2002 for Rs. 10 lacs.

ii) No. 246575 dated 21.6.2002 worth Rs. 10 lacs.

iii) No. 246577 dated 29.6.2002 worth Rs. 5 lacs.

iv) No. 246578 dated 20.8.2002 worth Rs. 10 lacs. And

v) Cheque No. 246579 dated 5.9.2002 worth Rs. 5 lacs, all cheques drawn on Oriental Bank of Commerce, Basant Avenue Branch, Amritsar.

The cheques, when presented to the bank, were dishonoured on the ground that the payments have been stopped. After receiving the intimation regarding dishonour of the cheques, a notice dated 1.8.2002 was sent to the accused and thereafter, the present complaints were filed.

Learned Judicial Magistrate 1st Class, Amritsar, after recording the preliminary evidence, summoned both the accused to face the trial. Thereafter, they were served with notice under Section 138 of the N.I. Act, to which they pleaded not guilty and claimed trial.

In order to prove its case, complainant examined Pawan Gulati (CW1), Sharad Kapoor, Managing Director of the complainant-Company (CW2) and closed the after charge evidence.

When examined under Section 313 Cr.P.C., both the accused denied the contents of the complaint as stated that they have been falsely implicated.

In defence, accused examined Parbhat Garg (DW1), Inderjit Singh, Senior Assistant of Punjab Financial Corporation (DW2), Sukhjinder Singh, Handwriting and Finger Prints Expert (DW3) and thereafter closed the defence evidence.

After hearing both the parties and going through the file, the learned Judicial Magistrate 1st Class, Amritsar, vide separate judgmens dated 1.9.2011, convicted and sentenced the accused as aforesaid.

The conviction of accused No. 1 Mrs. Kamaljit Kaur Ahluwalia was upheld in appeal, whereas accused No. 2 S.P. Singh Ahluwalia was acquitted of the charge framed against him, vide separate judgments dated 25.4.2013, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar, against which the present revision has been filed by accused No. 1 Mrs. Kamaljit Kaur Ahluwalia.

I have heard the learned counsel for the parties and have also carefully gone through the file.

Once, the cheque is proved, there is a presumption under Section 139 of the N.I. Act in favour of the holder of the cheque. However, such a presumption can be rebutted by the accused. The Hon'ble Supreme Court in case *K. Subramani Versus K. Damodara Naidu,* 2014 (4) RCR (Criminal) 985, took the view that under Section 138 of the N.I. Act, it must be proved that it was **'legally recoverable debt'**. It was further held that under Section 139 of the N.I. Act, there is a rebuttable presumption that there exists legally enforceable debt or liability. The accused can rebut such presumption. Similar view was expressed by this Court in *Manjit Kaur Versus Vanita,* 2010 (3) RCR (Criminal) 574.

In this way, the first and the foremost requirement is that legally recoverable debt must be proved. The facts of the present case show that the accused/revisionist had agreed to supply certain machinery to the complainant. The case of the complainant is that the machinery was supplied with a delay and complete machinery was not supplied. Therefore, he had suffered losses and damages and that he wrote different letters to the accused/firm and ultimately, demanded Rs. 57.11 lacs as damages. However, the present accused/revisionist, vide letter dated 1.6.2002 (Ex.P26), stated that she has assessed the damages at Rs. 40 lacs. Therefore, five cheques in dispute were sent.

Learned senior counsel for the accused/revisionist has vehemently argued that in this case, there is no legally recoverable debt. The case of the complainant is that the machinery was not supplied within time and he suffered the losses. The learned senior counsel has taken this Court through the agreement dated 12.6.2000 (Ex.CW2/4), entered into between the parties, which was regarding fabrication of the equipment for the plant to be established by the accused/firm in the premises of the complainant. The total cost of the equipment in the agreement with M/s Madhu Fabricators and others was calculated at Rs. 68.67 lacs. It is also not denying fact that the complainant had taken a loan for the purchase of machinery from the Punjab Financial Corporation. In the said agreement, it was not mentioned as to what will be the effect of default and whether any damages shall be payable and if so, how the damages will be calculated. The complainant had not produced any evidence to show as to how he calculated the damages in the letter mentioned above. It is simply a claim by the complainant.

Now, the question would arise whether this claim of damages amounts to a debt or legally recoverable debt ?

I am of the view that it is not so. It is a simple disputed claim of damages by the complainant. There is nothing on file to show that the claim was substantiated by any facts and figures. It is to be noted that when Punjab Financial Corporation (PFC) advanced the loan, normally some share, which in this case is alleged to be 25% was paid by the complainant and 75% was paid by the PFC, for which payment was directly made to the supplier. The PFC also carried out the inspection of the machinery to see whether the machinery has been supplied and installed. Accused/firm has produced a large number of receipts to show that they had supplied the machinery. The verification report by the PFC official (Ex.DW2/7) shows that the inspection of the factory premises of the complainant was carried out on 9.11.2001. The inspection was carried out under different heads. Under the 'machinery head', it is stated that the details of the machinery purchased by the Company, as per proforma, is attached with the report and the value of the machinery was assessed at Rs. 82.01 lacs. The amount not paid to the supplier was Rs. 12.30 lacs and the balance was shown to be Rs. 69.06 lacs. It is to be noted that the total value of the machinery as per agreement is Rs. 68.67 lacs, which shows that on 9.11.2001, when the verification was conducted by the PFC official in detail, the machinery worth Rs. 82.01 lacs was found installed, which falsify the stand of the complainant that the machinery was not supplied and on account of that, they have suffered losses. It was imperative on the part of the complainant to prove that they have actually suffered losses on account of alleged conduct of accused. Similarly, Ex.DW2/A also shows about verification. The reports were proved by Inderjit Singh, Senior Assistant of Punjab Financial Corporation (DW2). It shows that on 4.1.2002 when the damages to the tune of Rs. 57.11 lacs were claimed by the complainant, the entire machinery was already installed and consequently, the allegations of late supply of machinery and non-supply of the machinery are proved to be wrong. If the plant was already existing in November, 2001, then it is not understood that how the complainant suffered losses ? No accounts statement or other document was proved to establish as to what extent the complainant has actually suffered the losses, if any, as claimed by him.

Sharad Kapoor, Managing Director of the complainant-Company, while appearing as CW1, has stated in his examination-in-chief that the plant was not supplied within time and it was very slow and short supply of the machinery. Therefore, they had suffered damages and financial losses. The witness was cross-examined at length. The witness stated that accused failed to instal plant according to the terms and conditions of the agreement in question, which is a very vague statement. Accused has produced several bills to show that she had supplied the machinery. The complainant claimed in cross-examination that the equipment was to be fabricated and delivered within five months from the date of contract, but it was installed late more than 1 ½ years from the date of agreement in question i.e. 12.6.2000. However, the inspection report conducted by PFC official in November, 2001 shows that at that time the plant was already installed and the value of the same was assessed at Rs. 82.01 lacs. He also did not deny that a loan was taken from the PFC and that the PFC was to pay 75% of the amount as loan. He admitted that the inspection was conducted by PFC official, but he claimed that the payment was to be made first and only then the machinery was to be supplied, but volunteered to state that the machinery was not there and only empty parts were shown. This is contrary to the case of the complainant. The complainant also failed to tell as to how much payment was made to the accused/revisionist.

Therefore, it comes out that the complainant failed to prove that he suffered any loss on account of alleged late supply of the machinery and was legally entitled to claim any damages from accused. Even late supply of the machinery is not proved. Therefore, accused has been successful in rebutting the presumption under Section 139 of the N.I. Act to prove that there was 'no legally enforceable debt', for which the cheques are stated to have been issued. Disputed claim of damages, which are not determined by any authority cannot be called debt or legally recoverable debt.

Now, coming to the cheques itself, the case of the complainant is that accused sent these cheques with the letter dated 1.6.2002 (Ex.P26). The said letter is stated to have been issued from M/s Madhu Fabricators and is stated to have been signed by Mrs. Kamaljit Kaur Ahluwalia. The letter is stated to have been despatched from Delhi. It is to be noted that accused has examined an expert Sukhjinder Singh (DW3), who submitted the report that the signatures of the present revisionist do not tally with her standard signatures. It was stated that it is a copy forgery. However, the learned Judicial Magistrate 1st Class, Amritsar, was of the view that the signatures of the accused on the cheques in question tally with the specimen signatures of the accused/revisionist Mr. Kamaljit Kaur Ahluwalia. The fact that the payment of the cheques was stopped by the accused/revisionist goes to show that the opinion of the learned Judicial Magistrate 1st Class, Amritsar, is probably correct. The cheques bear the signatures of the accused/revisionist. However, these cheques are stated to be on account of damages assessed by the accused herself at Rs. 40 lacs, as admitted in disputed letter dated 1.6.2002 (Ex.P26). In the said letter, the accused herself is alleged to have stated that she has consulted their expert engineers to assess the amount of loss mentioned by complainant in his letter and they have already conveyed to the complainant on telephone that the losses suffered by him are not more than Rs. 40 lacs. The terms of losses can be settled by sitting face to face. Anyhow, in order to keep good terms like a good businessman, we are sending you five cheques. Though, the letter which is alleged to have been sent from Delhi, only bears initial of somebody in which only first letter 'K' with part of the same overwritten is visible. The signatures on the letter do not tally with the signatures on the cheques in question and other signatures of the accused on the agreement.

It is unlikely that accused will confess to pay Rs. 40 lacs fully knowing that the complainant has not given any proof of the damages. Therefore, the self-assessment of the damages in lieu of which cheques were issued is highly unlikely. In the given facts and circumstances, there is no authenticity that the letter was sent by the accused/revisionist. There is no proof of genuineness of the letter, though, it is on the letter head of the accused/revisionist concern i.e. Madhu Fabricators, wherein the address of Industrial Area, Phase-3, Bhiwadi, Rajasthan, is given. Therefore, I am of the view that there is no authenticity of the letter dated 1.6.2002 (Ex.P26), in which accused/revisionist has assessed the damages of the complainant at Rs. 40 lacs and enclosed the disputed cheques. The signatures on the said letter do not tally with any of the signatures of accused Kamaljit Kaur Ahluwalia, either on the agreement or on the cheques or anywhere else. Once, letter dated 1.6.2002 (Ex.P26) is discarded, it cannot be said that the cheques in dispute were issued in lieu of the damages. As discussed above, the complainant failed to prove that he suffered any damages as claimed by him, for which the said cheques are stated to have been issued.

From the foregoing discussion, I come to the conclusion that in this case, no 'debt' much less the 'legally enforceable debt' has been proved, for which the disputed cheques are stated to have been issued. Even the letter dated 1.6.2002 (Ex.P26), admitting the damages by accused, cannot be relied upon for the reasons recorded above.

Hence, the offence under Section 138 of the N.I. Act is not proved against accused/revisionist. As such, both the revisions are allowed. The impugned judgments dated 25.4.2013, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar, as well as the judgments and orders dated 1.9.2011, passed by the learned Judicial Magistrate 1st Class, Amritsar, are set aside and accused/revisionist is acquitted of the charges framed against her. Her bail bond/surety bond be discharged. Fine, if any, paid be refunded.

(KULDIP SINGH)
JUDGE

17.3.2015
sjks