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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 02.02.2015**

% **CRL.L.P. 268/2014 & CRL MA 5970/2014**

LUMINOUS POWER TECHNOLOGY PVT LTD Petitioner

Through: Mr. Sanjay Goswami and Mr. K
Bhimraj Achary, Advocates

versus

VINAY AGGARWAL Respondent

Through: Mr. Peeyosh Kalra and Mr. Abhishek
B, Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. I have heard learned counsel for the parties. This leave petition has been preferred to assail the judgment of the learned Civil Judge-I/MM, New Delhi in CC No.48/2012, whereby the learned Civil Judge/MM has dismissed the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (the Act).

2. The case of the petitioner/complainant was that the respondent was appointed as a distributor of the petitioner, which manufactures invertors and supplies batteries. The case of the petitioner was that the respondent/accused had issued the cheque in question for Rs.1,68,292/- dated 12.01.2009 drawn on Punjab National Bank, Bareilly, U.P. to the petitioner towards the legally recoverable debt due from the respondent.

Upon presentation, the cheque was dishonoured; a statutory notice was issued to the respondent; the respondent did not make payment of the amount covered by the cheque despite the notice before the expiry of the requisite period; and therefore, the complaint had been preferred.

3. The defence taken by the respondent/accused was that blank cheques were taken by the petitioner from the respondent towards security in the year 2007, and one of them had been misused by them by filling up the same subsequently for an amount of Rs.1,68,292/-. The respondent claimed that no amount was due from the respondent to the complainant; in fact, a substantial amount was due from the complainant to the respondent.

4. The Trial Court, after recording the evidence, dismissed the complaint primarily on two grounds. The first was that the cheque amount was Rs.1,68,292/-, whereas the ledger accounts of the complainant (DW-1/1) – which had been produced by DW-1 – the Deputy Manager of the complainant, showed that the net amount due from the respondent was Rs.1,61,042/- as on 12.01.2009. Therefore, the amount covered by the cheque was more than the amount due from the respondent. The second ground was that the respondent had been able to raise a probable defence that the cheque in question had been issued as security in the year 2007, which had subsequently been utilised by the complainant unauthorisedly. In this regard, the Trial Court took note of the fact that the cheque in question had been drawn in the name of “M/s. Luminous Power Technologies Ltd.”, whereas the name of the complainant and its composition was undergone a change as “Luminous Technologies Pvt. Ltd.” in the year 2009. DW-2 Sales Representative of the complainant – who had been working for 5 years,

deposed that *“The products of the complainant company were supplied to the accused by way of credit. Before the products used to be dispatched to the accused, certain cheques (1 or 2 in number) were taken as security from the accused as blank cheques”*. Thus, the Court found probable, the defence that blank cheque which had earlier been obtained in the year 2007 was filled in later in the year 2009 by the complainant. There was no reason or explanation why the accused would issue the cheque in the year 2009 in the erstwhile name of the complainant.

5. Learned counsel for the petitioner submits that the discrepancy in the amount reflected in the cheque, vis-à-vis. Exh. DW-1/1 arose on account of the fact that one credit note of 31.10.2008 for Rs.7,250/-, though reflected in the account had not been approved and, therefore, the liability of the respondent was Rs.1,68,292/- as on 12.01.2009, and not Rs.1,61,042/-. He submits that the cheque for Rs.1,68,292/- had been issued by the respondent.

6. The petitioner has also moved an application under Section 313 Cr PC on the basis that DW-1 has issued a communication dated 25.03.2014 (after the dismissal of the complaint) seeking to explain the accounting procedure followed by the petitioner and, therefore, seeks permission to re-examine the defence witness Dileep Kumar, DW-1 on the point of the letter of the said witness dated 25.03.2014.

7. Learned counsel for the petitioner has further submitted that the petitioner's bank was accepting cheques issued in both names, namely, “Luminous Power Technologies Pvt. Ltd.” and “Luminous Power Technologies Ltd.” and thus not much could be made of the fact that the cheque had been issued by the respondent in the name of “Luminous Power

Technologies Ltd.”, even though the name of the company had undergone a change to “Luminous Power Technologies Pvt. Ltd.”.

8. The principles applicable for consideration of a leave application against a judgment acquitting the accused are well-settled in ***Guru Nanak Tractors vs. Swarn Singh***, 2014 (3) RLR (CRI) 601. The relevant extract from the said decision reads as follows:

“8. Their Lordships of the Supreme Court in 'Allarakha K. Mansuri v. State of Gujarat, 2002 (1) RCR (Cri) 748', held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court. This view has been reiterated in State of Goa v. Sanjay Thakran, (2007) 3 SCC 755', and 'Chandrappa v. State of Karnataka, (2007) 4 SCC 415'.

9. A Division Bench of this Court in 'State of Punjab v. Hansa Singh, 2001(1) RCR (Cri) 775', while dealing with an appeal against acquittal, has opined as under:-

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in Ashok Kumar v.State of Rajasthan, 1991 (1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment underappeal were perverse or based on a misreading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference”

In Mrinal Das & others v. The State of Tripura, 2011 (9) SCC 479', decided on September 5, 2011, the Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable ", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.

10. Similarly, in the case of 'State of Rajasthan v. Shera Ram alias Vishnu Dutta, (2012) 1 SCC 602', the Hon'ble Supreme Court has observed as under:-

“7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its

jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for”.

11. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:-

“10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience”.

9. Thus, this Court would consider granting leave to appeal only if the judgment under appeal appears to be perverse, or passed by misreading of the evidence. If the Trial Court has accepted one of the two possible views and acquitted the accused, this Court will not grant leave to appeal merely because it may be inclined to take a different view.

10. In the present case, it has come on record that the complainant used to supply the products on credit to the distributors and used to take blank

cheque towards security. This is admitted by DW-2, who was the Sales Representative of the complainant for 5 years, when he deposed. The fact that the cheque was drawn in the erstwhile name of the complainant, namely, “M/s Luminous Power Technologies Ltd.” – which was the name of the complainant till 2007, and not in the name of “M/s Luminous Power Technologies (P) Limited”, which was its name when the cheque was allegedly issued in 2009, lends credence to the defence of the accused that the cheque in question was a blank cheque issued by the accused in the year 2007, which had subsequently been filled up by the complainant.

11. Though it is argued by learned counsel for the petitioner that reliance placed on *Alliance Infrastructure Product Pvt. Ltd. Vs. Vinay Mittal*, ILR 2010 III Delhi 459, was misplaced since in that case, the cheque amount was much more than the amount of liability of the accused, whereas in the present case the difference was only Rs.7,250/-, and that too, on account of the accounting practice of the complainant, I am not inclined to accept the said submission of the petitioner. The ledger account of the respondent showed the outstanding liability as Rs.1,64,042/-. Either the cheque would have been drawn for the said amount, or if the same had to be made for a larger amount, i.e. Rs.1,68,292/-, the reason for issuance of a cheque of a larger amount would have been contemporaneously recorded by the parties. Certainly, it cannot be said that the petitioner proved the commission of the offence in question beyond reasonable doubt, since the amount covered by the cheque was not the debt owed by the accused to the complainant and was more than the said amount. In my view, there is no perversity in the impugned order and it cannot be said that the Trial Court has misappreciated

the evidence of the parties.

12. The highly belated endeavour of the complainant to now seek to explain its accounting procedure appears to be an afterthought and, therefore, cannot be permitted.

13. The petition is, accordingly, dismissed.

VIPIN SANGHI, J

FEBRUARY 02, 2015

sr/B.S. Rohella

