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

\+ **Date of Decision: 03.03.2015**

% **CRL.L.P. 117/2015**

HANS KUMAR JAIN ..... Petitioner

Through: Mr. V.K. Khurana and Mr. Munish Chokkar, Advocates.

versus

RENU GANDOTRA @ POONAM ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

Crl. M.A. No. 3204/2015

1. Exemption allowed subject to all just exceptions.

2. The application stands disposed of.

CRL.L.P. 117/2015 and Crl.M.A. Nos.3203/2015

3. This petition has been preferred to seek special leave to appeal under Section 378(4) of the Cr.P.C. in respect of the judgment dated 17.12.2014 passed by the Chief Metropolitan Magistrate (East), Karkardooma, New Delhi in CC No.26/11/13 pertaining to Police Station – Krishna Nagar under Section 138 of the Negotiable Instruments Act, 1881 (NI Act).

4. By the impugned judgment, the respondent/accused has been acquitted of the offence under Section 138 of the NI Act. The petitioner/ complainant claims to be dealing in clothes under the name & style of "Jai Durga Traders". The respondent/accused was one of its customers. Purchases were being made by the respondent from the petitioner by making on account payments during the period 09.12.2010 to 23.01.2011. The complainant claimed that on the date of filing of complaint, Rs.9,75,460/- was due and payable by the accused. To discharge the aforesaid liability, the accused issued two cheques for Rs.1,80,060/- and Rs.7,95,400/-, dated 20.01.2011 and 08.04.2011 bearing Nos.546633 and 546625 respectively both drawn on Vijaya Bank, Mayur Vihar, Delhi. Upon presentation, both the cheques were dishonoured on 09.04.2011, due to stop-payment instructions given by the accused.

5. Consequently, after issuance of legal notice dated 02.05.2013 in terms of Section 138 of the NI Act, the aforesaid complaint was preferred by the petitioner since no payment was forthcoming. Upon appearance of the accused, notice under Section 251 of the Cr.P.C. for the offence punishable under Section 138 of the NI Act was served on the accused on 16.09.2011, to which the accused pleaded 'not guilty', and claimed trial.

6. The defence of the accused was, firstly, that the cheques have not been drawn on her account and did not bear her signatures, and that she had never personally met the complainant. Secondly, the accused also stated that payment as regards cheque No.546633 was made through RTGS, and the cheque No.546625 was a security cheque as mentioned/ written on the back of the cheque itself.

7. The complainant was cross-examined, whereafter the respondent led evidence of Mahender Singh, Clerk from Vijaya Bank as DW-1, Jaggan Nath Sharma, Senior Manager, Vijaya Bank also as DW-1, Manjit Singh as DW-2, Renu Gangotra as DW-3, and accused herself as DW-4.

8. From the impugned order, it appears that the Court did not give any weightage to the defence of the accused that the cheque was not drawn from her account and that, it did not bear her signatures. In any event, such a defence was contrary to the defence setup by the accused that payments as regards cheque No.546633 had been made through RTGS, and cheque No.546625 was a security cheque, as mentioned/ written on its back. Obviously, if the first defence of the cheque not being drawn from the account of the accused, and that it not bearing her signatures – implying that she did not know the complainant was true, then there was no question of payment by her in respect of one of the cheques through RTGS, and the giving of the other cheque as security. It appears from the impugned order that the Court proceeded to examine the defence of the accused premised on the latter submission. The Court found the defence of the respondent/accused to be probable – rebutting the statutory presumption raised against the accused, for the following reasons:

> *"(a) Because, on the backside of cheque bearing no. 546625 the words "security cheque against delivery" are mentioned, on which there is cutting.*
>
> *(b) Because the complainant has failed to explain that as to why the aforesaid words have been written on the backside of the cheque Ex.CW1/D and why there is cutting over the said words.*

(c) Because the complainant has failed to explain that as to why he received cheque exhibit Ex.CW1/D from the accused with the aforesaid words written on its backside.

(d) Because the cheque Ex.CW1/C dated 20.1.2011 bears number 546633 and the cheque Ex.CW1/D dated 8.4.2011 bears number 546625. The cheque bearing number 546633 is of January 2011 whereas the cheque bearing number 546625 is of April 2011. The said anomaly in the sequence in which the cheques have been issued, corroborates the defence taken by the accused that cheque bearing number 546625 is a security cheque and that is why on the backside of the said cheque the words "security cheque against delivery" are mentioned.

(e) Because, there is cutting on the words "security cheque against delivery" on the backside of cheque bearing number 546625 which shows that an attempt has been made to conceal the fact that the said cheque is a security cheque.

(f) Because the complainant has failed to disclose in the complaint and in his affidavit that as to when the two cheques were received by the complainant from the accused and that as to why there is a difference of about three months in the dates of the two cheques.

(g) Because the cheque bearing number 546633 corresponds to the sale shown in the ledger account of the complainant Ex.CW1/B on 16 December 2010 against voucher number 1927 of Rs.1,80,060/-, but the cheque bearing number 546625 does not correspond to any such entry in the ledger account and they said cheque is with respect to the remaining amount in the ledger account, and it is quite possible that the cheque bearing number 546625 was a security cheque and the same was utilised by the complainant by filling in it the total amount due against the accused as per the ledger account.

(h) Because the complainant has failed to file on record any bill, voucher or invoice to show that clot public goods were sold by the complainant to the accused and that the accused

was liable to pay the amount shown in the ledger account Ex.CW1/B.

(i) Because the complainant has failed to prove delivery of goods to the accused and has admitted in his cross-examination that no signature of the accused were taken against delivery of goods in the following words:

> *"I did not take any signature of the accused against delivery of goods on any document. It is wrong to suggest that the accused did not purchase the goods that is why she has not signed any document pertaining to sale, purchase/receipt of goods"*

Thus, the complainant has neither produced any bill or voucher to show that sale of goods was made by the complainant to the accused and the complainant has also failed to produce any delivery receipt, to show that goods were delivered by the complainant to the accused.

(j) Because the complainant has failed to produce any document in order to show that the entries in the ledger account Ex.CW1/B are correct and properly maintained.

(k) Because, prima facie the cheque bearing number 556625 seems to be security cheque because of the aforesaid reasons, and dishonour of a cheque given as security does not amount to an offence u/s 138 N.I. Act………… ……………………

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(l) Because after the sale transaction of 16 December 2010 in sum of Rs. 1,80,060/, three RTGS payments dated 30 December 2010, 18 January 2011 and 20 January 2011 in sum of Rs. 129,384/, Rs. 2 lakh and Rs. 1 lakh respectively, have been received by the complainant from the Arena International. The accused has taken the defence that payment against cheque number 546633 was made through RTGS, but the complainant has argued that the said amount was received with respect to other transactions. However, once the complainant has

admitted that the complainant has received amount from Arena International through RTGS, then the onus to prove that the said payments were received with respect to other transactions and not with respect to transaction dated 16 December 2010 in sum of Rs.1,80,060/- lies upon the complainant and not upon the accused or Arena International.

(m) Because the legal notice Ex.CW1/G was sent by registered post and courier, however, both the registered post came back and the courier sent at NOIDA address also came back. The courier which was sent to Ambedkar Nagar address was not received back and the complainant wishes to draw a presumption regarding service of the said notice on that basis alone. However, the presumption as regards service of notice by post under section 27 of the General Clauses Act is only applicable to registered post and not to courier.

As the courier company is a private limited company, therefore in order to prove service of legal notice upon the accused, the complainant should have examined an official of the said company.

(n) Because the complainant has neither stated in his complaint or in the affidavit the description and the quantity of the goods which were supplied by the complainant to the accused."

9. The first submission of learned counsel for the petitioner is that the payments claimed to have been made through RTGS by the respondent did not pertain to the sale made vide Voucher No.1927 for Rs.1,80,060/-, for which the cheque bearing No.546633 dated 20.01.2011 had been issued.

10. I do not find any merit in this submission, since the three payments made through RTGS were made after the said invoice/ voucher for Rs.1,80,060/- had been raised on 16.12.2010. The three RTGS payments were made on 30.12.2010, 18.01.2011 & 20.01.2011 in the sum of

Rs.1,29,384/-, Rs.2,00,000/- and Rs.1,00,000/- respectively. Thus, it was for the petitioner complainant to establish that the said RTGS did not pertain to the sale transaction dated 16.12.2010 for the amount of Rs.1,80,060/-.

11. In respect of the cheque bearing No.546625 for Rs.7,95,400/- dated 08.04.2011, learned counsel for the petitioner submits that merely because the said cheque was given towards security, was no ground to hold that the offence under Section 138 of the NI Act would not result upon dishonour of such a cheque if the other conditions of the said provision are met. In this regard, he placed reliance on the judgment of this Court in ***Haryana Petrochemicals Limited & Another Vs. Indian Petrochemicals Limited & Another***, 2015 (1) JCC (NI) 11, which, in turn, has referred to and relied upon the judgment of the Supreme Court in ***I.C.D.S. Ltd. Vs. Beena Shabeer and Another***, 2002 Crl.L.J. 3935: (2002) 2 SCC 426.

12. In my view, there is no merit in this submission of the petitioner for the reason that the complainant petitioner did not lead any evidence whatsoever to establish the supply of goods to the respondent accused of the amount in question, i.e. Rs.7,95,400/-. The complainant did not file on record any bill, voucher or invoice to show that goods were sold by the complainant to the accused, or accepted by the accused, for which the accused was liable to make payment to the complainant. Had the complainant established the supply of goods, in the light of the aforesaid decisions in ***Beena Shabeer*** (supra) and ***Haryana Petrochemicals Limited*** (supra), the submission of the petitioner could have been accepted.

13. A perusal of the reasons given by the Trial Court for acquittal of the

respondent shows that they are germane, and it cannot be said that there is any perversity in the reasoning of the Trial Court. No misdirection in the appreciation of evidence by the Trial Court has been pointed out by the petitioner. The presumption of innocence of the accused stands fortified by the impugned judgment, and there is no reason why this Court should interfere with the same. In this regard, reference may be made to the decision of the Punjab & Haryana High Court in ***Guru Nanak Tractors vs. Swarn Singh***, 2014 (3) RLR (CRI) 601.

14. For the aforesaid reasons, I find no merit in this petition and dismiss the same.

15. Since the leave petition itself has been rejected, there is no purpose in issuing notice on the application seeking condonation of delay in filing the leave petition. The same is, accordingly, dismissed.

VIPIN SANGHI, J

MARCH 03, 2015

B.S. Rohella