

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

+ **Date of Decision: 20.04.2015**

% **CRL.L.P.673/2014**

M/S ARISE INDIA LTD.

..... Petitioner

Through: Mr. Satya Prakash, Advocate

versus

ARUN MITTAL

..... Respondent

Through: Mr. Avadh Kaushik, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. This leave petition has been preferred to assail the judgment dated 28.08.2014 passed by the learned Metropolitan Magistrate (Special NI Court)-04, Dwarka Courts, New Delhi, in CC NO. 1410/14, in a complaint case preferred under Section 138 of the Negotiable Instruments Act. By the impugned judgment, the learned trial court has acquitted the respondent-accused.

2. The case of the complainant-petitioner as narrated in the complaint is that the complainant placed an order for installation of an elevator at their office in Sonapat. The accused had been paid an amount of Rs. 3.25 lakhs towards installation of the lift/elevator, however, the accused could not install the quality lift which resulted in huge losses to the complainant, and the manufacturing process in the office / factory was stalled. The

complainant claimed that, time and again, it called upon the accused to remove the defects which were not removed in the installed lift and accordingly, the accused failed to install the second lift in the office of the complainant. The complainant claims that the accused agreed to refund the amount paid by the complainant i.e. Rs. 3,25,000/-. It is further stated that the accused have given a cheque of Rs. 1,00,000/- drawn on ICICI Bank Ltd., dated 01.01.2010. The said cheque was deposited by the complainant with its bank, namely, Oriental Bank of Commerce at Palam, New Delhi, which was returned unpaid with the remarks, 'insufficient funds' vide returning memo dated 06.05.2010. It was returned unpaid on an earlier occasion as well in April 2010. The complainant issued a notice on 31.05.2010 under Section 138 of the Negotiable Instruments Act. Since the accused did not make payment within the statutory period, the said complaint was preferred.

3. At this stage itself, I may observe that the facts which are admitted by both the parties are that the two lifts had been ordered to be installed by the respondent accused-one by the complainant M/s Arise India Ltd. (for short, 'Arise') and the other by M/s Vardhman Techno Power Pvt. Ltd. (for short, 'Vardhman'). Arise is a tenant of Vardhman in the premises in which both the lifts were agreed to be installed. The accused had supplied and installed one of the two lifts in relation to which there were complaints. A consumer claim has also been preferred by Vardhman in respect of the said lift. The dispute between the Vardhman and the accused was settled. The second lift, which had been agreed to be supplied to the petitioner – according to the complainant, was only partially supplied and was not installed. According

to the complainant, the accused had agreed to refund the entire amount of Rs. 3.25 lakhs in respect of second lift ordered by the complainant, for which Rs. 3.25 lakhs have been advanced to the accused. These facts have not been as clearly and fully disclosed in the petitioner's complaint. However, learned counsel for the complainant submits that these facts have been brought out during the course of evidence.

4. The complainant claimed that out of the amount of Rs. 3.25 lakhs, Rs. 1,00,000/- was transferred in the account of the complainant through RTGS by the accused on 09.02.2010. The complainant claimed that the cheque of Rs. 1,00,000/- (in respect whereof the complainant was preferred) was in respect of an installment payable by the accused out of the amount of Rs. 3.25 lakhs. On the other hand, the defence of the accused was that the cheque in question was issued on 01.01.2010, and subsequently transfer of Rs. 1,00,000/- through RTGS, into the account of the complainant-petitioner, was made at the request of Vardhman. The said amount was, in fact, payable to Vardhman under the settlement. However, at the request of Vardhman, the said payment was deposited into the account of the petitioner since the petitioner therein is a sister concern of Vardhman. The defence of the accused was that for the amount payable to Vardhman, initially the cheque dated 01.01.2010 had been issued (the cheque in question), however, subsequently, the amount has been transferred through RTGS. The petitioner did not return the cheque which should have been so returned, and has misused the same.

5. The submission of learned counsel for the petitioner is that there are serious factual infirmities in the impugned judgment. He submits that the

trial court has proceeded on the basis that the dishonor of the cheque in question had taken place earlier in point of time to the transfer (through RTGS) of Rs. 1,00,000/- into the account of the complainant. He submits that, whereas the transfer through RTGS have been made on 09.02.2010, the dishonor of the cheque had taken place on two occasions i.e. in April and finally on 06.05.2010. Therefore, it could not be said that the accused had made payment in lieu of the cheque through RTGS. Secondly, learned counsel for the petitioner submits that the story set up by the accused, that the said amount of Rs. 1,00,000/- was paid to the petitioner (through RTGS), at the request of Vardhman, is the mere *ipse dixit* of the accused, as no evidence has been led by the accused to substantiate the said plea.

6. On the other hand, learned counsel for the respondent has supported the impugned judgment. Learned counsel has firstly submitted that the complaint itself is highly deficient in the disclosure of the relevant facts which appear to have led into some factual inaccuracy creeping in the recording of facts in the impugned judgment. He further submits that the complainant has not led any evidence to establish that there was a so called agreement between the parties, whereunder the accused allegedly agreed to refund the entire amount of Rs. 3.25 lakhs to the complainant. Learned counsel submits that there was no crystalised debate on the date of issuance of the cheque i.e. on 01.01.2010. He submits that it is highly improbable that the parties would agree that the respondent would refund the entire payment of Rs. 3.25 lakhs in respect of the equipment supplied by the accused, without there being any corresponding obligation to return the said equipment to the accused. In this regard, the submission of learned counsel

for the petitioner is that, since there was a dispute about the scope of the equipment supplied qua the second lift, the petitioner had not disclosed in the complaint that the petitioner was obliged to return the equipment. However, the petitioner is willing to return the equipment, which, is only some parts of the lift.

7. Having heard learned counsel for the parties and perused the record, I am of the view that there is no serious infirmity in the impugned judgment which calls for interference with the same. No doubt, a perusal of the impugned judgment does show that there is some lack of clarity in the mind of the learned Metropolitan Magistrate with regard to the facts. The learned Metropolitan Magistrate appears to have mixed up the facts pertaining to one lift with the other. In fact, he does not seem to have appreciated that there were two different transactions for supply of two lifts-one to the petitioner and the other to Vardhman. There is also a mix up of dates inasmuch, as, the trial court has proceeded on the basis that the dishonor of the cheque had taken place earlier in point of time, and the transfer through RTGS had been made by the accused into the account of the complainant, subsequently.

8. The aforesaid infirmities, however, do not impinge on the fundamental reasoning found in the impugned judgment which is found in paragraphs 10 and 11 of the impugned judgment. The same read as follows:

“10. Now, accused can be asked to refund the entire money only in on eventuality, i.e., if the elevator was not of the merchantable quality and accordingly the complainant had avoided the contract. But this is not the case of the complainant, it has not been contended that the elevator was

not working at all and accordingly complainant had nullified the contract. The contention of the complainant is that the elevator was not of the good quality. Moreover, no written agreement has been filed on record to clarify the terms of agreement.

11. Thus, merely because the complainant has alleged that elevator was not of good quality, the accused cannot be held liable to refund entire amount of Rs. 3,25,000/-. Moreover, nothing has been placed on record to show that accused agreed to repay the said amount. Even otherwise, why a prudent person shall return the entire amount when he has delivered and installed elevator in lieu of the money paid. Though, the compensation for defects or poor quality can be agreed. Therefore, it is not proved that accused was liable to repay the Rs. 3,25,000/- to the complainant."

9. Learned counsel for the petitioner has not been able to satisfactorily explain to this Court as to why the respondent would agree to return the entire amount of Rs. 3,25,000/- to the petitioner in respect of the allegedly partially supplied lift (which according to the respondent had been fully supplied), when there was a dispute existing between the parties with regard to the scope of supply effected, and there was no corresponding obligation for the petitioner to return the supplied equipment. Even if one were to assume for the sake of argument, that only some parts of the second lift had been supplied, the agreement would have provided for return of the said parts. However, the complaint is completely silent in this respect. The submission of learned counsel for the petitioner that in respect of the scope of equipment supplied, the dispute is pending a civil suit, itself, shows that the extent of the alleged liability of the accused, if any, was not crystallized. It could not be said that the accused owed an amount of Rs. 3.25 lakhs to the complainant under the alleged agreement – even if there was one. No

explanation is forthcoming as to why the cheque in question, dated 01.01.2010 was present for the first time only in April 2010.

10. No perversity is pointed out in the impugned judgment. It cannot be said that there is misappreciation of the material evidence. The presumption of innocence of the accused stands fortified by the impugned judgment. For the aforesaid reasons, I do not find any merit in this petition and the same is dismissed.

APRIL 20, 2015
sl



VIPIN SANGHI, J