

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-68 of 2015 (O&M)
Date of decision: May 10, 2016

M/s Apollo Tyres Limited

...Appellant

Versus

M/s Taneja Tyres and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vishnu Godara, Advocate
for the appellant.

Mr.Parminder Singh, Advocate
for the respondents.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the respondents challenging the impugned judgment dated 23.03.2013 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the accused-respondents were acquitted and the complaint filed by the appellant was dismissed.

Notice of motion was issued and learned counsel for the respondents appeared and contested the appeal.

I have heard learned counsel for the parties and have gone through the record.

The brief facts of the case as stated in the complaint are that accused No.2 is the proprietor of accused No.1 and in the

capacity of the same, he purchased products i.e. tyres, tubes, flaps etc. for the purpose of resale from complainant on credit. The complainant company is maintaining the complete account of accused and as per the records and accounts of the company, a total sum of ₹1,22,122/- was due from the side of accused towards complainant company. To discharge the above-said liability, the accused issued two cheques bearing Nos.653963 and 653964 dated 01.09.2010 for ₹61,061/- each, which on presentation for encashment, were returned back unpaid with the remarks 'please contract drawer'. Legal notice was served upon the accused. When the amount was not paid, then the complaint was filed within time.

After summoning the accused, notice of accusation was served upon him, to which he pleaded not guilty and claimed trial.

The complainant examined himself as CW-1 and deposed as per prosecution version. In cross-examination, he stated that accused has not sent the letter dated 11.09.2010 to him regarding defective goods. He further stated that when any customer returns defective goods to the company, the company exchanged the goods on prorata basis.

The accused was examined under Section 313 Cr.P.C. and he denied all the allegations. Accused examined himself as DW-1 and tendered some documents in defence i.e. Ex.DW1/1 to Ex.DW1/6. In his cross-examination, he stated that he has sold 10 tyres to Amarts and Subhash Chhabra but the customer returned the tyres to him on the ground that tyres have some manufacturing defect.

He also stated that he sent a letter dated 11.09.2010 to Manager of M/s Apollo Tyres mentioning all these facts and requested them not to encash the post dated cheques regarding bill Nos.710101924-25 but the complainant deposited the same and filed the present complaint.

Learned JMJC, Gurgaon, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 23.03.2013.

From the record, it is clear that the accused has issued letter dated 11.09.2014 that the defective tyres have already been returned to the company and post dated cheques should not be encashed. Along with this letter, the accused has also produced the postal receipt as well as acknowledgment. The complainant has denied regarding receiving of this letter but the accused has duly proved that complainant has received this letter. So, the probable defence raised by the accused has been duly supported by letter dated 11.09.2010. There is no dispute regarding the fact that the accused have purchased 10 tyres being Distributor. DW-2 Subhash Chhabra has also supported the defence version that he purchased the tyres from the accused and he returned the same having manufacturing defect.

Furthermore, when the accused himself appeared as DW-1, he brought the original bill book to show the sale of those tyres to DW-2 Subhash Chhabra. The mere fact that no receipt was given by the complainant while returning the tyres, will not prove the case of the complainant. The denial by the complainant regarding receipt of

letter dated 11.09.2010 sent by the accused, also makes the version of the complainant non-reliable. The presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused by raising probable defence, which is duly supported by documentary evidence and defence evidence.

I have gone through the judgment passed by learned JMIC, Gurgaon. I find that the findings given by learned Magistrate are correct, as per evidence and law. In no way, the findings can be held as perverse i.e. against the evidence and law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below.

In view of the above discussion, I find that the findings have been given by learned JMIC, Gurgaon, while appreciating the evidence in right perspective. The accused-respondents have rightly been acquitted. The impugned judgment dated 23.03.2013 passed by learned JMIC, Gurgaon, is correct, as per law and evidence and does not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

May 10, 2016
Vgulati

(INDERJIT SINGH)
JUDGE