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

+ CRL.L.P. 660/2016 and Crl. M.A. Nos.19606-608/2016

+ CRL.L.P. 664/2016 and Crl. M.A. Nos.19658-661/2016

+ CRL.L.P. 665/2016 and Crl. M.A. Nos.19662-665/2016

M/S D.N. PAPER MARKETING

..... Petitioner

Through: Mr. Ambar Qamaruddin &
Mr.Tesjasvi Kumar, Advocates.

versus

M/S TIKMANY PAPER P. LTD. & ANR.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
19.12.2016

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Crl.M.A. Nos. 19606 and 19608/2016 in Crl.L.P. No. 660/2016

Crl.M.A. Nos. 19658 and 19660/2016 in Crl.L.P. No. 664/2016

Crl.M.A. Nos. 19662 and 196664/2016 in Crl.L.P. No. 665/2016

Exemption allowed subject to just exceptions. For the reasons stated in the application for condoning the delay in re-filing the petition, the delay in re-filing is condoned and the same are allowed.

The applications stand disposed of.

Signature Not Verified

Signing Date:30.09.2024 17:20:36
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

Crl.L.P. No. 660/2016 and Crl.M.A. No. 19607/2016

Crl.L.P. No. 664/2016 and Crl.M.A. No. 19659/2016

Crl.L.P. No. 665/2016 and Crl.M.A. No. 19663/2016

The petitioner has preferred the aforesaid leave petitions to seek leave to appeal against the similar orders dated 07.05.2016 passed in each of the complaints being complaint Nos. CC 11576/1/09 (in relation to Crl.L.P. No. 660/2016), CC 13131/1/09 (in relation to Crl.L.P. No. 664/2016) and CC 13284/1/09 (in relation to Crl.L.P. No. 665/2016). By the identical orders, the aforesaid three criminal complaints preferred by the petitioner under Section 138 of the Negotiable Instruments Act against the same set of accused have been dismissed and the respondents/accused acquitted.

The petitioner has also sought condonation of delay of around 135 days in filing the leave petitions.

Since I have heard learned counsel for the petitioner on merits and I do not find any merit in the present leave petitions, I do not consider it necessary to issue notice on the delay application.

The case of the petitioner is that the petitioner is carrying on its business of trade in paper and paper products under the name and style of M/s D.N. Paper Marketing. The accused approached the complainant for supply of 'duplex board' manufactured by M/s P.N. Paper Mills Pvt. Ltd. by placing different purchase orders. The complainant claimed to have supplied 'duplex board' to the accused from time to time under the said purchase orders. The complainant claimed that in respect of the supplies made, an amount of Rs. 20,53,882/- became outstanding against the accused persons. The complainant raised the bills in respect of the outstanding

amount and also sent letters and reminders requesting for payment of the outstanding amount. The complainant claimed that the accused issued 10 cheques in favour of M/s D.N.Paper Marketing including the cheques in question in each of the aforesaid complaints. Each of these cheques were of Rs. 2 lacs drawn on ICICI Bank Ltd., Palanappa Complex, Sivakasi. The said cheques were dishonoured upon presentation on account of the insufficient funds. Consequently, the complainant issued the statutory notice under Section 138 of the Negotiable Instruments Act. Despite receipt of the legal notice, the accused did not make payment and, consequently, the aforesaid complaints were preferred. The accused was summoned and notice under Section 251 Cr.P.C. was framed. The accused pleaded not guilty and claimed trial.

In the post notice evidence, the complainant examined itself as CW1. The statement of the accused was thereafter recorded under Section 281 Cr.P.C. read with Section 313 Cr.P.C. The defence taken by the accused was the same as that taken by him at the time of framing of notice under Section 251 Cr.P.C., namely, that the goods supplied by the complainant were defective. The accused also examined accused no.2 as DW1. He stated that as a general practice, multiple undated cheques used to be issued as security along with purchase orders with specific instructions to present the cheques on different dates to clear the liabilities. The material supplied by the complainant did not conform to the specifications of the purchase orders, and several defects were noticed. Information regarding the defects were given to the complainant. The complainant and Sh. Hemant Mukherjee visited Sivakasi and inspected the goods. The complainant also collected samples. The accused also produced photographs showing the

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remarks on samples of defective goods in the complainant's own handwriting. These photographs were marked as Ex.DW1/D. The accused also claimed that the claimant assured to send a proper team to segregate the defective goods but no such team was ever deputed and, consequently, stop payment instructions were given to the bank. The trial court held that the defence of the accused was probabalised and, consequently, acquitted the accused.

The submission of learned counsel for the petitioner is that apart from making a bald assertion that the goods were defective, the accused did not lead any evidence to substantiate the said defence.

A perusal of the impugned order shows, and this fact was admitted during the cross-examination of CW1, that undated cheques were given by the accused to the complainant in August, 2008. CW1 also accepted that information regarding defective goods was given by the accused and inspection of the defective goods was carried out by the complainant. All arrangements for inspection of defective goods were made by the accused. The complainant also accepted that the accused had informed the complainant not to present the cheques in question. Accused No. 2 also stated that the complainant along with Mr. Hemant Mukherjee visited Sivakasi on the expenses of the accused for inspection of goods and upon inspection of the goods, they found the goods to be defective. Photographs along with remarks in complainant's handwriting were placed on record as Mark DW1/D (six photographs). The trial court has observed that no objection was raised by the complainant during trial to the production of the photographs Mark DW1/D and no suggestion was given to the accused challenging the authenticity of the said photographs. No suggestion was

given to the accused to challenge the claim of the goods supplied by the complainant being defective. Thus, the conclusion drawn by the learned Magistrate that the cheques had been given in advance as security towards supply of goods which turned out to be defective was probabalised. The trial court has marshalled the evidence in the case in para 12 of the impugned order in the following manner;

"I have perused the entire record and have given due considerations to the submissions made on behalf of the parties. The Court has to first see as to whether the complainant has proved that the accused issued the cheques in question towards a legal liability in favour of the complainant or not from the account maintained by him. To prove this complainant has relied upon his affidavit Ex.CW-1/A. As per complainant, the cheques in question Ex.CW-1/C to Ex.CW-1/E got dishonoured. Return memos Ex.CW1/F (colly) of cheques are placed on record by the complainant in this regard. To prove that mandatory legal notice Ex.CW-1/G was sent by him, he has relied upon documents Ex.CW1/H & Ex.CW-1/I. Hence, initial presumption is raised in favour of the complainant.

Defence taken on behalf of accused persons to the case of the complainant is that cheques in question were issued as undated security cheques regarding supply of material. As per accused No.2, the material supplied by the complainant was defective and was not as per purchase order. Accused no. 2 also stated during trial that upon information complainant along with Sh. Hemant Mukherjee visited to Shivakashi on his expenses for inspection of goods and upon inspection of goods, they found the goods defective. Photographs along with remarks in complainant's handwriting are placed on record as Mark DW-1/D (six photographs). It is submitted by Ld. Counsel for the accused that as cheques in question were given as security cheques and goods supplied by the complainant were defective hence, accused do not have any liability towards the complainant. Per contra, it is submitted by Ld. Counsel for the complainant that supply of goods by complainant to

accused and signatures in cheques in question are accepted by accused and hence, accused cannot deny their liability towards the complainant. It is further submitted by Ld. Counsel for the complainant that by taking plea of defective goods, accused are only trying to escape from their liability. Complainant during cross-examination accepted that information regarding defective goods was given by accused no. 2 to him and they also visited to Shivakashi for inspection of goods regarding defects in goods supplied by him. Complainant specifically did not deny regarding defects in goods supplied by him. Photographs Mark DW-1/D were not objected by the complainant during trial. Neither any suggestion is given to accused regarding authenticity of photographs Mark DW-1/D nor any suggestion is given regarding defects in goods on behalf of complainant. Upon perusal of photographs Mark DW-1/D and mark A dated 08.12.2008, it is clear that there were some defects in the goods supplied by the complainant. From this, case of complainant comes under the shadow of doubt and liability of accused towards cheques in question become doubtful. Visit of complainant to Shivakashi and acceptance of handwriting on Mark A by complainant, collectively support the defence taken by accused. Further, expenses of visit of complainant to Shivakashi were borne by accused and as a matter of prudence, no one would bear Air Fare and other expenses of other party without any reasonable cause and this fact further strengthen the defence of accused. Moreover, since starting of trial, accused had taken the consistent defence that undated security cheques were given by him to complainant regarding supply of goods but the goods supplied were defective and not of quality as per the purchase orders. All the above discussed facts, are collectively sufficient to rebut the presumption in favour of complainant and to cast shadow of doubt over the case of the complainant. In view of above, complainant has failed to show the liability of accused persons regarding cheques in question."

In the light of the evidence brought on record, the petitioner has failed to point out any perversity in the impugned order calling for interference by

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this Court by grant of leave. This Court is of the view that the defence of the accused was probablized as rightly held by the trial court. Consequently, I find no merit in these petitions and dismiss the same.



VIPIN SANGHI, J

DECEMBER 19, 2016

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