IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-30-2015
Date of decision:-20.11.2017

Chander Kanta and another

...Appellants

Versus

M/s Anand Agro Industries and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Naveen Daryal, Advocate
for the appellants.

None for respondents.

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H.S. MADAAN, J.

Complainants – Chander Kanta and Pankaj Anand had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against accused M/s Anand Agro Industries, Jundla through its partner, Smt.Nirmala Devi @ Nirmala Rani and Neelam as partners of the said concern on the allegations that complainants and Smt.Nirmala Devi @ Nirmala Rani and Neelam (accused Nos.2 and 3) were partners of the firm namely M/s Anand Agro Industries (accused No.1); that the said partnership was mutually dissolved, resultantly complainants retired from the partnership and accounts were settled; that accused Smt.Nirmala Devi @ Nirmala Rani being partner of accused No.1 firm had issued cheque No.861412 dated 15.3.1999 in the sum of Rs.5,25,000/- from account No.753 of the firm maintained with Oriental Bank of Commerce, Nissing on account of share of complainants, however, on presentation the cheque was returned uncashed along with memo of the bank having remarks “Refer to Drawer”; that the complainants were informed accordingly; thereafter they served statutory notice upon the accused calling upon them to make the payment of the cheque within stipulated period but to no effect, as such complaint was filed in the Court of Judicial Magistrate Ist Class, Karnal.

After recording of preliminary evidence, accused were summoned. Notice of accusation under Section 138 of the Act was served upon them, to which, they pleaded not guilty and claimed trial.

During the course of post summoning evidence, complainants examined Sh.Kishan Singh, Manager, Oriental Bank of Commerce, Nissing as CW1, who produced statement of accounts in the name of M/s Anand Agro Industries having account No.753 as Ex.CW1/A, return memo dated 28.3.1999. Smt.Chander Kanta complainant appearing as CW2 tendered her affidavit Ex.CW2/A, in which she reiterated case of complainants as given in the complaint.

With that the evidence of the complainant stood closed.

Statements of accused were recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them submitted that the partnership firm between the complainants and accused Nos.2 and 3 has not been dissolved and is still in existence; that the accounts were never settled between the parties as alleged by the complainants; that there was no legal liability upon the accused to issue a cheque of Rs.5,25,000/- to the complainants and the said cheque has been misused by the complainants.

During their defence evidence, the accused examined Suresh Kumar, Ahlmad as DW1, who produced the case file titled as "State Versus Nirmala Devi and others" proving charge-sheet dated 2.12.1999, in terms of which complainants and accused Nos.2 and 3 had been been charge-sheeted for the offence under Section 12(a) of the Punjab Schedule Roads Controlled Area, Act by Additional Chief Judicial Magistrate, Karnal. Sh.Bhupinder Singh, Civil Ahlmad appearing as DW2 had produced a copy of complaint in a suit for rendition of accounts titled as "M/s Anand Agro Industries Versus Pankaj Anand and others" filed by accused against the complainants as Ex.DW2/A. Sh. Krishan Kumar, Additional Ahlmad appearing as DW3 proved copy of complaint under Section 138 of the Act filed by accused Nirmala Devi @ Nirmala Rani against Pankaj Anand, present complainant No.2 a Ex.DW3/A. Mohan Lal, Clerk, Oriental Bank of Commerce, Nissing appearing as DW4 produced copy of account opening form of account No.753 as Ex.DW4/A. He further proved copy of specimen signature card as Ex.DW4/B, copy of deed of partnership as Ex.DW4/C. DW5 Sunil Kumar supported the defence version producing accounts of Pankaj Anand as Ex.DW5/1, those of Chander Kanta as Ex.DW5/2, Nirmala Devi as Ex.DW5/3, Neelam Devi as Ex.DW5/4, Goel Commission Agents as Ex.DW5/5, accounts of M/s Shanti Rice Mills as Ex.DW5/6 and opening balance and cash book as Ex.DW5/7.

Thereafter, the defence evidence of accused stood closed.

After hearing arguments, the learned trial Magistrate dismissed the complaint under Section 138 of the Act.

The complainant felt aggrieved and he had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal. Leave to appeal was granted and appeal was admitted vide order dated 30.1.2015.

Notice was served upon the respondents but they did not appear.

I have heard learned counsel for the appellants besides going through the records.

Learned trial Magistrate while dismissing the complaint has observed as under:

> *The moot point for determination before this Court is whether the accused No2 issued a cheque of amount of Rs.5,25,000/- to the complainants, on behalf of firm, accused No.1, to discharge its legal liability to pay the complainants the amount of their share in the firm and whether the accused Nos. 2 and 3, being partners of the firm, accused No.1, are liable to be prosecuted for offence punishable under Section 138 of Negotiable Instruments Act.*
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> *It is admitted case of both the parties that the complainants as well as the accused No.2 and 3 constituted a partnership firm in the year 1996. The plea taken by the complainants is that the partnership was dissolved in the*

month of March, 1999 and the accounts were settled between the parties. After settling the accounts, the share of the complainants was determined to the tune of Rs.5,25,000/- and as such the accused No.2 issued a cheque for the said amount to the complainants on behalf of accused No.1. The contention of the complainants that the partnership between the parties was dissolved in March, 1999 is not supported by evidence. In the complaint itself, no date, month or year of dissolution of the partnership firm is mentioned by the complainants. Even the facts and circumstances also show that the partnership between the parties was never dissolved in the month of March, 1999 CW2, Chander Kanta admitted that neither any notice of the dissolution of partnership firm was sent by her to the rest of the partners nor any such notice was given to bank, Sales Tax Department or Income Tax Department. DW-4, Madan Lal,stated that the account No.753 is in the name of M/s Anand Agro Industries having four partners, that is, the complainants and the accused No.2 and 3. He further stated that no letter of dissolution of partnership firm has been received by the bank so far. Had the partnership firm been dissolved in the year 1999, notice of such fact, at least, should have been given to the bank or any department by any of the partners. The absence of any such evidence and the vague plea taken by the complainants in the complaint regarding the fact of dissolution of *partnership firm clearly reveals that the complainants have failed to prove that the partnership firm between the parties was dissolved in the month of March, 1999.*

The complainants have further failed to prove that the accounts between the partners were settled and that the share of the complainants was determined to the tune of Rs.5,25,000. The statement of accounts have not been proved by the complainants to show as to how much share each partner was holding at the time of dissolution of firm. Even the accounts of the firm have not been produced so as to prove that the share of the complainants was determined to the tune of Rs.5,25,000/-. CW-2, during cross-examination, stated that she did not know how much money was invested by her in the partnership firm nor she knew whether the partnership firm went in profit or suffered loss. She further stated that she and the accused No.2 and 3, being ladies, were not involved in the daily business affairs of the firm and the business was run by their husbands. She also stated that the accounts between the partners were settled orally. From the testimony of DW-2, it can be easily gathered that no accounts were settled between the partners as three out of the four partners admittedly knew nothing about the finances of the firm.

There is no doubt that the presumption under Section 139 of Negotiable Instruments Act, 1881 is that the holder of the cheque received the cheque for the discharge, *in whole or in part, of any debt or other liability, but the presumption is rebuttable and the existence of legally recoverable debt is not a matter of presumption under the said Section. The Hon'ble Supreme Court held in* ***Krishna Janardhan Bhat Versus Dattatraya G. Hegde, 2008(1) Civil Court Cases 716****, that presumption available to the complainant under Section 139 of the Act is as to isuance of cheque for discharge of debt or other liability but the existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. The Hon'ble Court further held that the accused can rebut the presumption under Section 139 of the Act from the entire material brought on record by both the parties.*

In the present case, the accused have been able to rebut the presumption that the cheque of Rs.5,25,000/- was issued by the accused No.2 on behalf of firm, accused no.1, in discharge of legally enforceable debt. The contention of the complainants is that the cheque was issued to give the complainants their share in the firm, which was dissolved. But from the oral as well as documentary evidence adduced on file, neither the dissolution of the firm not the settlement of accounts have been proved. As such, it is not proved that there was a liability of the accused on the date of issuance of cheque on account of settlement of accounts and in order to give the share of complainants to them. The facts of the case in hand are covered within the four corners of law laid *down by the* ***Hon'ble Andhra Pradesh High Court in K.A. Prakash Rao Versus U. Indira Devi and others, 2007(1) Civil Court Cases 483****, wherein the Hon'ble Court held that where a cheque is issued to a retiring partner and no evidence as to retirement of partnership is adduced, the only reasonable conclusion could be that there is no existing liability on the date of issuance of the cheque.*

I do not find any reason to differ with learned trial Magistrate with such observations. Essential ingredients of Section 138 of the Act have not been fulfilled inasmuch as complainants having failed to prove that cheque in question was issued by accused No.2 on behalf of accused No.1 in discharge of legally enforceable financial liability. The accused could not possibly be convicted for the said offence. I do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeal, the same stands dismissed.

(H.S.MADAAN)
JUDGE

20.11.2017
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No