

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-1717-SBA of 2005

Date of decision: December 20, 2017

M/s Wockhardt Limited

.....Appellant

Versus

D.K. Chandel and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Manu K. Bhandari, Advocate for the appellant.

Mr. Inderjit Sharma, Advocate for respondent No.1.

A.B. CHAUDHARI, J

Being aggrieved by the judgment dated 13.03.2004 passed by the Additional Sessions Judge, Bathinda, in Criminal Appeal No.30 dated 01.11.2003, by which the learned lower Appellate Court allowed the appeal preferred by respondent No.1-accused and acquitted him of the charge under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') by reversing the judgment and order dated 30.10.2003 in case complaint No.142 of 24.07.1999 passed by the Judicial Magistrate Ist Class, Bathinda, which had convicted respondent No.1-accused of the charge under Section 138 of the NI Act, the present appeal has been preferred by the appellant-company.

In support of the appeal, learned counsel for the appellant submitted that the judgment and order of the trial Court could not have been reversed by the lower Appellate Court that too for flimsy reasons recorded by the learned lower Appellate Court. According to him, the

complainant had proved its case beyond reasonable doubt and by producing of the record required for proving the case and not only that there was presumption in favour of the appellant that was raised against respondent No.1-accused. The learned lower Appellate Committed committed an error in giving the reasons for acquitting respondent No.1-accused as if it was trying a civil suit ignoring the presumption that arose for dishonor of cheque. He has taken me through the evidence of the complainant-witness and the record.

Per contra, learned counsel for the respondent No.1-accused opposed the appeal and argued supporting the impugned judgment of the lower Appellate Court. He also supported the reasons recorded therein that the appellant had not proved that there was any outstanding liability against respondent No.1-accused that was required to be proved by documentary evidence since the appellant is company maintaining all the records. He, therefore, prayed for dismissal of the appeal.

I have gone through the entire record so also the evidence with the assistance of the learned counsel for the rival parties. I have also seen the reasons recorded by the learned trial Judge for convicting respondent No.1-accused. It is not in dispute that the cheque in the sum of ₹4,17,148/- was issued by respondent No.1-accused as was duly proved by the complainant and the said cheque was dishonored. It is also not in dispute that the appellant had issued a legal notice under Section 138 of the NI Act, on 09.06.1999 but that was not even replied

to by respondent No.1-accused and the accused had failed to make payment also. The complainant entered the witness-box and proved all the above facts and not only that he also proved that there was liability against respondent No.1 in the matter of purchase of goods from the appellant-company. It is not necessary for me to discuss the same evidence over and over again and it would be enough, if I quote discussion made by the learned trial Court on the evidence in Paragraphs 9, 10, 11, 12, 13 and 14 of its judgment dated 30.10.2003, which read thus:-

“9. The accused in the present case has been charged u/s 138 of the Negotiable Instruments Act, as per which where any cheque drawn by a person of an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit in that account is in-sufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed offence.

10. In the case in hand, as per the complainant's case cheque Ex-CW-2/A was issued by the accused for a sum of Rs.4,17,148/- of an account maintained by him with his banker State Bank of India in favour of the complainant i.e. Wockhardt Ltd. for discharge of the debt, i.e. purchase of goods which had been made by the accused from the complainant on credit basis. This cheque when presented by the complainant to its bank at Bathinda, was returned unpaid for want of in-sufficient funds and referred to drawer.

11. *The complainant by himself steeping into the witness box as CW-2 has duly proved the above mentioned facts. His testimony is sanctified by the testimony of CW-3 Sanjiv Nagpal, Assistant Manager, State Bank of India, Cheog (Himachal Pardesh), who stated that the accused has an account in their bank and cheque No.233565 which was issued by the accused was received by their bank drawn in favour of the complainant company. This cheque was returned back on 20.05.1999 to State Bank of India, Bathinda unpaid as the funds in the account of the accused were in-sufficient. PW-1 Lal Chand, Record Keeper-cum-Cashier, State Bank of India, Bathinda stated that as per their record cheque Ex-CW-2/A No.233565 was presented in their bank by Wockhardt Ltd. i.e. complainant company which had current account in their bank bearing No.43346. This cheque was sent on 06.05.1999 to State Bank of India, Cheog, which was returned dis-honoured on account of in-sufficient funds. He relied upon the intimation letter dated 26.05.1999 Ex-P1. PW-5 Sameer Tandon, Advocate proved on file legal notice Ex-CW-5/A, which was sent by him on 09.06.1999 to the accused calling upon him to make the payment to the complainant.*

12. *This cheque was dated 30.04.1999 and it was presented for encashment in May 1999 vide memo Ex-CW-4 on 26.05.1999. The complainant was intimated with regard to the non-encashment of the cheque for want of in-sufficient funds. Complainant on 09.06.1999 served a legal notice upon the accused. On non-receipt of any reply and payment from the accused, the present complaint was filed by him on 24.07.1999. Thus all the formalities as stipulated u/s 138 of the Negotiable Instruments Act were completed by the complainant in time.*

13. *From the above evidence led by the complainant, it*

is clear that in discharge of his liability which is clear from the statement of account referred to by the complainant in his evidence, the accused has issued the cheque Ex-CW-2/A, which was dis-honoured for want of sufficient funds and hence the complaint.

14. Defence taken by the accused is that this cheque was stolen by an employee of the complainant from his office and thereafter filled up and presented with the bank. This defence put by the accused is false and frivolous to the naked eye. If it was really the case, the accused would have definitely lodged some complaint with the police with regard to his stolen cheque, but there is no such complaint on file. The defence taken by the accused is thus merely an after thought and does not come in his rescue in any manner.”

Perusal of the above reasons clearly show that the complainant had proved its case with precision that the cheque was dishonored, though, the same was issued by respondent No.1 towards price of the goods. The trial Court also found that the defence taken by respondent No.1 that the cheque was stolen by the appellant-company was afterthought. All the reasons given by the learned trial Court above are based on evidence which I have checked from the record.

However, lower Appellate Court recorded strange reasons for recording order of acquittal. In the first place, the lower Appellate Court has not given any importance to the fact that respondent No.1-accused did not reply the legal notice that was issued to him under Section 138 of the NI Act nor did he take any defence at that time. Apart from that he did not examine anybody or himself before the

Court to prove to the contrary. He preferred kept quiet throughout. In that event, the presumption available under Section 138 of the NI Act was required to be raised against respondent No.1-accused since respondent No.1 did not prove anything contrary. But then the lower Appellate Court has not given any importance to the said provision and on the contrary, as if it was dealing with the civil suit sought the evidence which is ordinarily tendered before the civil Court in civil suit.

The very object of bringing section 138 of NI Act and provision of Section 139 of NI Act for presumption was for early disposal of the claims of the parties. The said object was thus, defeated by the lower Appellate Court by giving reasons that the account book that was proved was not sufficient when the same is also evidence under Section 34 of the Evidence Act, 1872. The reason given by the lower Appellate Court that he did not bring the cash book or order book etc. could well be understood, if civil suit is tried. The lower Appellate Court had relied upon the reason that the writing on the cheque and signatures are different and is *sans* any evidence or admission as alleged. The further reason in Para 16 of judgment of lower Appellate Court about the dates of the resolution of the company to lodge the cases in the Court is again faulty. The resolution of the company dated 22.04.1999 empowers the complainant to file complaint in all such cases and therefore, have no relevance whatsoever even the date of the cheque was 30.04.1999. The entire judgment recorded by the lower Appellate Court cannot be supported.

In the result, the judgment of the lower Appellate Court will have to be set aside and the judgment of the trial Court will have to be restored.

Hence, following order is passed:-

ORDER

- (i) CRA-S-1717-SBA of 2005 is allowed;
- (ii) The judgment dated 13.03.2004 passed by the Additional Sessions Judge, Bathinda in Criminal Appeal No.30 dated 01.11.2003, is quashed and set aside;
- (iii) Consequently, the judgment and order dated 30.10.2003 in case complaint No.142 of 24.07.1999 is restored;
- (iv) The learned lower Appellate Court shall implement the judgment and order dated 30.10.2003 of the trial Court within a period of 4 weeks from the date of receipt of certified copy of this order.

(A.B. CHAUDHARI)
JUDGE

December 20, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No