IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 04.07.2017

CRM-A No.1692-MA of 2014

Samant Bhatia ...Appellant

Vs.

M/s Hindok Exports Ltd. & others ...Respondents

CRM-A No.1693-MA of 2014

Samant Bhatia ...Appellant

Vs.

M/s Hindok Exports Ltd. & others ...Respondents

CRM-A No.1727-MA of 2014

Samant Bhatia ...Appellant

Vs.

M/s Hindok Exports Ltd. & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. Amandeep Singh, Advocate, for the appellant.

Mr. Piyush Kant Jain, Advocate, for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

This order shall dispose of aforementioned three applications i.e. CRM-A No.1692-MA of 2014; CRM-A No.1693-MA of 2014 & CRM-A No.1727-MA of 2014 filed by the complainant seeking leave to appeal against the three separate judgments passed by the learned Judicial Magistrate Ist Class, Ludhiana on September 30, 2014 in Criminal Complaint No.5909/2 of 02.08.2010; Criminal Complaint No.5911/2 of 02.08.2010 & Criminal Complaint No.6158/2 of 31.08.2010 respectively, on the ground that the trial Court had made a mistake in recording the acquittal.

On May 5, 2015, this Court while issuing notice of motion, passed the following order:

> "Learned Senior Counsel for the appellant(s) inter alia contends that signature as well as amount of cheque are admitted. Presumption in terms of Section 139 of Negotiable Instruments Act though rebuttable presumption, but the respondent-accused could not discharge the same even by preponderance of evidence. Documents in the form of VAT Return and Audit Reports remain as mark document and, therefore, carry no evidentiary value.
>
> Notice of motion for 17.07.2015.
>
> Records of the case be also requisitioned.
>
> A photocopy of this order be placed on the file of connected cases."

I have heard Mr. Akshya Bhan, learned senior counsel appearing on behalf of the complainant and Mr. Piyush Kant Jain, learned counsel representing the respondents at a considerable length and have perused the case file. If the complainant in a Negotiable Instruments Act matter treats the disputed cheque as security and sells goods on that basis to the accused, the offence of cheque bouncing cannot be said to be made out. That apart, there is an admission by the complainant, in his statement that the cheque in question, was given by way of security for business. The Judicial Magistrate Ist Class, Ludhiana in its judgment of acquittal has understood the case and expressed his fair opinion that the complainant has not been able to prove all the essential ingredients of Section 138 of the Negotiable Instruments Act to bring home the charge.

Mr. Akshay Bhan relies on a judgment of the Supreme Court in Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited [Criminal Appeal No.867 of 2016 decided on 19.09.2016] to attack the judgment while praying for leave to appeal.

On the other hand, Mr. Jain points out that the said judgment is inapplicable to the facts of this case because the Supreme Court considered the issue of security in the light of the liability involved. However, in the present case, the bills are bogus. Neither the supply of the goods is proved by the complainant nor any alleged sale is reflected in his own Return of Sales before the concerned Department. No freight/transportation is proved and the complainant in his cross-examination admits that these cheques were for security.

Thus, I find that the learned trial Court, after considering the entire evidence in its correct perspective, has rightly returned a finding of acquittal. I do not find any error in the findings recorded by the learned trial Court, which may warrant consideration by way of appeal. Accordingly, all the applications for grant to leave to appeal are dismissed.

04.07.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*