

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-208-MA of 2015 (O&M)
Date of decision: 06.02.2017

Deepak Malhotra

..... Applicant-appellant

Versus

Tilak Raj Jinta

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arvind Kashyap, Advocate
for the applicant-appellant.

SURINDER GUPTA, J.

This is an application seeking leave to appeal against judgment dated 24.10.2013 passed by learned Judicial Magistrate, Ambala whereby complaint filed by applicant-appellant under Section 138 of Negotiable Instruments Act was dismissed.

2. Case of applicant-appellant, in brief, is that on 07.08.2010, respondent approached him for purchase of Apple Polishing and Apple Grading Machine worth ₹1,56,982.50 ps. Price of the machine excluded installation and maintenance charges of ₹45,000/-. On negotiation, deal was settled for ₹2 lacs. Respondent paid ₹75,000/- through demand draft with the assurance that he will pay remaining amount within 30 days. Machine was sent to respondent vide invoice nos. 11 and 12 of 07.08.2010. After installation of machine, he failed to pay remaining amount and ultimately in discharge of his liability issued cheque no. 678937 dated 09.09.2010 for a sum of ₹1,25,000/- drawn on UCU Bank Chirgaon, District Shimla, which on presentation to bank was dishonoured for want of sufficient funds.

3. In defence, respondent stated that he had a deal with

complainant for supply of four machines and had given advance through demand draft of ₹75,000/-. Thereafter, he had given three cheques of same series. Cheque (Ex. D-2) of ₹2 lacs was got encashed by complainant. Second cheque is the cheque in question while third cheque was misused by the complainant in collusion with his friend Gurmeet Singh. Remaining three machines were not supplied by the complainant and he has already got excess amount from the respondent.

4. On perusal of evidence, learned Judicial Magistrate, Ist Class, Ambala found substance in the submission raised by respondent and observed as follows:-

“15. In the present case, the complainant has produced Ex. C3 and Ex. C4 invoices vide which he has supplied the Apple Polishing and Apple Grading Machines to the accused for the value of ₹1,56,982.50 ps. It is also an admitted fact that these machines were supplied to the accused on 07.08.2010. Further the payment of ₹75,000/- as an advance by the accused to the complainant is also an admitted fact. Now the point for determination is whether the cheque in question was executed in discharge of existing legal enforceable debt/liability or not or whether the cheque in question was given as post dated cheque for the purpose of security or as sale consideration for remaining machines. This court is of the opinion that the cheque in question was given by the accused as post dated cheque for the security purpose for supplying the remaining

machine to him by the complainant for the reasons mentioned hereinafter. During cross-examination, CW-1 has categorically stated that he supplied the goods vide Ex.C3 and Ex.C4 only and he has not supplied any other goods to the accused and CW1 has clearly stated it is wrong to suggest that apart from ₹75,000/- he has taken ₹2,00,000/- from the accused through cheque and intentionally this fact has not been mentioned by him in his complaint but when he was confronted with the cheque no. 678936 dated 8.8.2010 of the amount of ₹2,00,000/- he admitted that he has taken the payment of ₹2,00,000/- vide this cheque and it bears his signatures at point 'A'. But in this regard, he himself stated it was that payment for the sale consideration of crates, which were supplied by someone else but he has failed to produce any evidence as to show the supply of such crates by himself or by anybody else. Further, the invoices Ex. C3 and Ex.C4 are dated 7.8.2010 vide which the machines were supplied to the accused whereas the cheque of ₹2,00,000/- which was encashed by the complainant is dated 8.8.2010 which clearly shows that cheque bearing no. 678936 was post dated cheque given by the accused to the complainant. Further the complainant has not mentioned the taking of the payment vide cheque no. 678936 dated 8.8.2010 against alleged supply of the crates in his complaint or in his

affidavit Ex. CW1/A and even during cross-examination he has denied the payment of ₹2,00,000/- but when he was confronted with the same he accepted the payment of ₹2,00,000/- vide this cheque. Further, the complainant has admittedly taken the amount of ₹2,75,000/- whereas as per his pleadings he has supplied the goods for value of ₹2,00,000/- only which further strengthen the probability of the version taken by the accused that he has given three post dated cheques complete in all respect except the cheque no. 678938 wherein the name of the payee was left blank on asking of the complainant to be filled up when the machine would be supplied by either of his company.....”

5. Learned counsel for the applicant-appellant has argued that admittedly respondent had paid ₹75,000/- out of settled amount of ₹2 lacs for supply of Apple Polishing and Apple Grading Machine. Another sum of ₹2 lacs was received by the applicant-appellant with regard to some other transaction and not with regard to this deal.

6. Learned Trial court has elaborately discussed this fact and has committed no error of law while concluding that applicant-appellant has not been able to explain as to on what account he received ₹2 lacs from the respondent. Onus was on the applicant-appellant to explain the receipt of ₹2,75,000/- from the respondent particularly in view of the defence of respondent that he had ordered for four such machines and had given three cheques to applicant-appellant towards security. The date of payment of ₹2 lacs also coincide with supply of machinery. As per case of applicant-

appellant, machinery was supplied to the respondent on 07.08.2010 and payment of ₹2 lacs was received by him on 08.08.2010. The applicant-appellant has utterly failed to prove that cheque in question was issued towards any outstanding liability by the respondent.

7. On perusal of judgment passed by learned trial Court, I find no legal or factual error therein calling for interference. This appeal has no merit, as such, application seeking leave to appeal is declined.

8. There is delay of 376 days in filing the application under Section 378(4) Cr.P.C. As the matter has been decided on merit. The application (CRM-3448-2015) seeking condonation of delay of 376 days is only for academic discussion and is not going to effect merit of the case, as such, is formally allowed.

February 06, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No