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

CRR-746-2013
Date of decision:-18.9.2017

M/s Escorts Consumer Credit Ltd.
...Petitioner

Versus

Rajesh Kumar Gaur
...Respondent

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

Present : Mr.Virat Gandhi, Advocate
for the petitioner.

Mr.Vijay Kumar Jindal, Senior Advocate with
Mr.Akshay Jindal, Advocate and
Mr.Amardeep Sheoran,Advocate
for the respondent.

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H.S. MADAAN, J.

The present criminal revision petition has been filed on behalf of petitioner (complainant) M/s Escorts Consumer Credit Ltd. against the order dated 31.10.2012 passed by learned Sessions Judge, Gurgaon allowing the appeal and setting aside the judgment and order of sentence dated 29.3.2012/30.3.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon vide which the accused were convicted and sentenced to undergo simple imprisonment for a period of one year and to pay compensation, the cheque amount i.e. Rs.10 lacs to the complainant.

The complainant, who is petitioner before this Court pray that the revision petition be accepted, the impugned order dated 31.10.2012 passed by learned Sessions Judge, Gurgaon be set aside and judgment and order dated 29.3.2012/30.3.2012 passed by the trial Court be restored.

Briefly stated the facts of the case are that M/s Escorts Consumer Credit Ltd., a Public Limited Company having its registered office at 22A, Prince Arcade, Cathedral Road, Chennai and regional office at N-6, Partap Building Connaught Circus, New Delhi had filed a complaint under Sections 138, 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against M/s Bhrigoo Automobiles and others on the allegations that accused No.1 of which accused Nos.2 to 4 are partners responsible for conducting day to day business had issued cheque No.513317 dated 3.6.2003 for a sum of Rs.10 lacs drawn on Punjab National Bank, Baldev Nagar, Ambala City in favour of complainant company on account of discharge of financial liability. The complainant company deposited the cheque in its account with his banker namely The Bank of Rajasthan Ltd., Ghaziabad but it was returned unpaid with the remarks "Account Closed" vide bank memo dated 3.12.2003. The complainant served legal notice dated 29.12.2003 upon the accused but despite that accused did not make payment. Hence the complaint.

After recording preliminary evidence, the accused were ordered to be summoned. They put in appearance and notice of accusation was served upon accused Rajesh on 9.5.2009 and notice was served upon accused Amit Jyoti and Tirlok Nath Sharma on 23.11.2009, to which they pleaded not guilty and claimed trial. During the course of evidence of complainant, it examined S.K. Tandon as PW1 and AR Mr. Parveen Sangwan as PW2, and thereafter evidence of the complainant was closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case. They have also denied their liability to pay anything to the complainant.

The accused led evidence in defence and examined Vijay Kumar Arora, Chief Manager of Punjab National Bank, Baldev Nagar, Ambala City as DW1 whereas accused Rajesh himself appeared as DW2.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra. The accused feeling aggrieved preferred an appeal, which was allowed by the Appellate Court. The main reasons for acceptance and setting aside of the judgment passed by the trial Court as can be gathered from the perusal of said judgment and putting those concisely were as under:

(i) After passing of summoning order instead of proceeding with the summary trial, invoking provisions of Section 263(g) and (h) of Cr.P.C. in terms of proviso (a), (b) and (c) of Section 138 of the Act, the trial Court proceeded to serve notice of accusation against accused Rajesh on 9.5.2009 since two other accused were absent on the said date and when they appeared on 23.11.2009, notice was served upon them as well. Thus, without following the procedure envisaged in Section 251 and 263(h) of

Cr.P.C. full length trial was initiated by the trial Court, thus diverting from the mandate of Section 143 of the Act. Notice of accusation served upon two accused depict casual and reckless approach of the trial Court inasmuch as signatures of the trial Court in token of serving of this notice on the accused was conspicuously missing though at the tail end of the notice of accusation signatures of accused Amit Jyoti and Tirlok Nath Sharma appear but in absence of signature on the notice of accusation on the notice and also on the certificate that contents of the notice have been read over and explained to the accused in simple Hindi, it cannot be said that notice was duly given to the accused or that it was valid and legal. Furthermore, contents of notice were incomplete. In view of blank left in the notice and main contents being missing, it has to be taken no notice in legal terms.

(ii) The accused were required to disclose their defence why they want the case to be tried as a summons on the very first date of hearing which was not got done. Procedural irregularity was there during the trial.

(iii) PW2 Parveen Sangwan had appeared thrice on 8.12.2010, 17.12.2010 and 25.1.2011 but had neither brought the record including resolution of the company vide which he had been appointed as authorized representative of the company nor he brought the minute book. Since he had joined the company only in May, 2008, thus was not a witness of the transactions between the parties. Agreement between the parties was the foundation as it alone was regulating their dealings, but he had not brought even the original agreement and did not produce it at any time even later.

(iv) The complainant company had a separate business whereas Escorts Yamaha Motors Ltd. had a distinct and separate business line to follow and to promote business of Escorts Yamaha Motors Ltd., the complainant company had been providing finance to the buyer of an automobile as reference to statement of PW2 Parveen Sangwan in that regard has been given, observing that hire-purchase agreement to the buyers were with the company and could not have been with the dealer. PW1 stated in his cross-examination that he was having no documentary evidence to show any liability of the accused firm towards the complainant company in or around November, 2002.

(v) The summary trial was required to be conducted, which is mandatory.

(vi) Deposition of S.K. Tandon, Manager of complainant company who appeared as PW1 being doubtful and unconvincing on account of the replies given by him in the cross-examination and non-production of relevant record by him.

(vii)Failure of the complainant to show that the cheque in question had been issued on account of discharge of financial liability and non-production of corresponding and supporting books of accounts and documents in that regard.

(viii)From co-joint reading of statements of PW2 Parveen Sangwan and PW1 S.K. Tandon, there being nothing to show that there was any debt or liability which was to be discharged by the accused to the complainant company.

(ix)The defence plea being plausible and satisfactory that cheque in question had been taken blank and had been signed by accused and further name of payee being filled in different ink, date amount in word on the cheque with another different ink. In that way, presumption under Section 118-A and 139 of the Act being not attracted.

The First Appellate Court has concluded the discussion observing as under:

Thus, viewed from any angle, it is clear case where presumption was raised wrongly by the learned trial Court against the accused under Section 139 of the

Act but even if it be taken as such if even stood rebutted as there was neither any “debt nor other liability” in the discharge of which cheque (Ex.P3) (wherein three different pen & inks were used)could have been given by the accused to the complainant company. The complainant has also not been able to establish that it was holder in due course of the cheque (Ex.P3). Support may be had from ***Girish Versus S. Ramaiah 2011(4) Criminal Court Cases 310 (Karnataka)*** and ***K. Prakashan Versus P.K.Surederan 2007(4) Recent Criminal Reports 588 (SC)***.

Keeping in view the totality of facts circumstances, it is clear that approach of the learned trial Court has been erroneous on facts as also in law. It is proved beyond doubt that the cheque (Ex.P3) has not been issued in discharge, either as a whole or in part, of any debt or other liability by the accused. Consequently, finding of conviction returned against the accused under Section 138 of the Negotiable Instruments Act, 1881 is neither sustainable on facts or in law.

Resultantly, the judgment passed by the trial Court was set aside and appellants were acquitted of the charge framed against them. Against that judgment of acquittal, the petitioner – complainant has approached this Court by way of filing instant revision petition.

Notice of the revision petition was issued to respondent, who appeared through counsel.

I have heard learned counsel for the parties besides going through record.

After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

Learned counsel for the petitioner has contended that the First Appellate Court has wrongly upset the judgment passed by the trial Magistrate and that wrong is required to be undone by way of acceptance of the revision petition setting aside the judgment passed by the First Appellate Court and restoring the judgment passed by the trial Court. In support of his contention, he has referred to various authorities which are as under:

1. ***M.M.T.C. Ltd. and another Versus Medchl Chemicals & Pharma (P) Ltd. and another, 2002(1) Crimes 156(SC).***
2. ***Hiten P. Dalal Versus Bratindranath Banerjee, (2001)6 SCC16.***
3. ***Rangappa Versus Sri Mohan, (2010)11 SCC 441.***
4. ***Goaplast Pvt. Ltd. Versus Shri Chico Ursula D'Souza and Anr., (2003) 3 SCC 232.***
5. ***Jugesh Sehgal Versus Shamsher Singh Gogi, (2009) 14 SCC 683.***

Learned counsel for the revision petitioner has contended that all the necessary ingredients of the offence under Section 138 of the Act were fulfilled but the Appellate Court wrongly came to the conclusion that it was not so and accepted the appeal dismissing the complaint for the reasons, which are not convincing and plausible.

On the other hand, learned counsel for the respondent defended the judgment passed by the First Appellate Court contending that no ground to opposite that judgment comes out to be there. He has contended that PW2 Parveen Sangwan had got his statement recorded furnishing his affidavit, but PW2 S.K. Tandon had not tendered any affidavit, which is illegal and impermissible. He has also referred to various citations as under:

1. ***M.S. Narayana Menon @ Mani Versus State of Kerala and another, 2006(3) Crimes 117.***
2. ***M/s Kumar Exports Versus M/s Sharma Carpets, 2009(1) R.C.R.(Criminal) 478.***
3. ***Nitinbhai Saevatilal Shah and another Versus Manubhai Manjibhai Panchal and another, 2011 AIR (SC) 3076.***
4. ***C Antony Versus K.G. Raghavan Nair, 2003 AIR(SC) 182.***

Learned counsel for the respondent has also placed reliance upon ***Sonu @ Amar Versus State of Haryana, Criminal Appeal No.1418 of 2013*** by Hon'ble Supreme Court, wherein it was observed as under:

It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65B (4). It is clear from the judgments *referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could 23 have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 of the Cr. P.C. 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65 B (4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.*

It was further observed as under:

This Court did not apply the principle of prospective overruling in Anvar's case. The dilemma is whether we should. This Court in K. Madhav Reddy v. State of Andhra Pradesh, (2014) 6 SCC 537 held that an earlier judgment would be prospective taking note of the ramifications of its retrospective operation. If the judgment in the case of Anvar is applied retrospectively, it would result in unscrambling past transactions and adversely affecting the administration of justice. As Anvar's case was decided by a Three Judge Bench, propriety demands that we refrain from declaring that the 32 judgment would be prospective in operation. We leave it open to be decided in an appropriate case by a Three Judge Bench. In any event, this question is not germane for adjudication of the present dispute in view of the adjudication of the other issues against the accused.

After hearing the counsel and going through the citations pressed into service by them, I find that the judgment passed by the Court of Sessions in appeal is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. Such Court had come to the conclusion that necessary ingredients of offence under Section 138 of the Act were not fulfilled. In that regard reference to the evidence and other facts and circumstances of the case was made stating that trial Court had wrongly come to the conclusion otherwise, in that way the complaint had been dismissed.

There is no illegality or infirmity in the order passed by the Court of Sessions in appeal much less apparent on the face of it. Such judgment cannot be termed as perverse since it come out to have been passed in the light of settled principles of criminal jurisprudence.

Finding no merit in the revision petition, the same stands dismissed.

Necessary intimation be sent to the quarter concerned.

18.9.2017 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No