

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1853 of 2014 (O/M)
Date of decision : 13.12.2017

M/s Spacemakers and another

..... Revisionists

Versus

M/s Mansi Trading Co.

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amit Jhanji, Advocate, for revisionists.

Mr. I.S. Pabla, Advocate, for respondent.

Mr. R.K. Makkad, DAG Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

This revision is directed against judgment dated 11.6.2014, passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, affirming the judgment of conviction and order of sentence dated 26.9.2013, passed by the learned Judicial Magistrate 1st Class, Jagadhri, vide which present revisionist was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and was sentenced to undergo rigorous imprisonment for one year and to pay a compensation of Rs. 1700000/- to complainant under Section 357 (3) Cr.P.C. within two months. In default of compensation amount, accused-revisionist was directed to undergo further rigorous imprisonment for three months.

The details of facts of the case, as extracted from the evidence led by the complainant, are that Mangat Ram (since deceased), sole proprietor of M/s Mansi Trading Company, now through his legal heir

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Rakesh Kumar, filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, read with Section 420IPC, stating that accused No. 1 is proprietor of accused No. 2 company and is responsible for running day-to-day affairs of the company. Accused Sunil Kumar placed an order dated 7.1.2009 to M/s Mansi Trading Company through fax. Complaint firm on receiving the order through fax, purchased requisite material from M/s Pashupatinath International against invoice No. 309, dated 23.1.2009. The material was then supplied to accused company, vide Bill No. 4, dated 2.2.2009. The calculation of bill was also sent through fax to accused firm on 24.1.2009. To discharge said existing liability, accused issued cheque bearing No. 501133, dated 12.2.2009, for Rs. 15,58,397/-, drawn on ICICI Bank Limited, Panchsheel Park Branch, New Delhi, in favour of Mangat Ram (since deceased) with the assurance that the cheque will be honoured. Accused Sunil Kumar also sent a fax message to complainant, stating about sending of cheque to complainant company. Mangat Ram (since deceased) had presented the said cheque to Oriental Bank of Commerce, Jagadhri, which was dishonoured with the remarks 'Funds Insufficient'. Thereafter, Mangat Ram (since deceased) issued a legal notice dated 13.3.2009. In the meanwhile, Mangat Ram died and present complaint was filed through his legal heir Rakesh Kumar.

I have heard the learned counsel for revisionists, the learned counsel for respondent, the learned State counsel and have also carefully gone through the file as well as the lower Court file.

The learned counsel for accused-revisionist has vehemently argued that in this case, the existing liability is not proved. The learned counsel has drawn the attention of this Court towards stand taken by accused

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in statement under Section 313 Cr.P.C. wherein he has stated that one Parmod Arora was director of his company. Revisionist used to hand over signed blank cheques to him. Parmod Arora committed a fraud with the company. Parmod Arora colluded with complainant to defraud the accused-revisionist. He stated that one of his signed blank cheque (Ex.C1) has been misused by Parmod Arora in collusion with present complainant. He stated that except his signatures on the cheque, the cheque has not been filled in by him. In defence, accused produced some documents (Ex.D1 to Ex.D7).

The learned counsel for revisionists has contended that in this case, it is claimed by complainant that the cheque was issued as a payment for the material supplied to company of revisionist. However, it is claimed that said supply of goods is not proved. The learned counsel for revisionists has also drawn attention of this Court towards documents (Ex.C7 to Ex.C15), produced by the complainant in evidence, which were objected to on the ground of mode of proof. It is stated that since these documents are photostat copies and are not proved in accordance with law, therefore, these are to be discarded.

I am of the view that during cross examination of both brothers, namely, Pawan Kumar as well as Rakesh Kumar, accused never claimed that original of said documents should be produced for verification. The said documents are to support the claim of revisionist that cheque was issued for discharge of legal liability. The said documents are regarding placing the order for supply of aluminium sections to complainant firm and complainant firm further placing the order to M/s Pashupatinath International and thereafter on receipt of same, complainant dispatching the

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said goods to accused company. Ex.C11 is the order sent through fax. Ex.C12 is the letter stating about payment made in response to invoice issued by complainant, regarding supply of goods. Further, even if these documents are not taken into consideration, the fact remains that both Rakesh Kumar and Pawan Kumar have stated that order for aluminium sections was placed by accused-revisionist and that aluminium sections were supplied and on receipt of the goods, cheque was issued. Accused did not produce record of his company to show that infact no such fax was sent, as claimed by complainant in his evidence and that no goods were received by them and that the letter regarding sending of the payment through cheque was never written by accused revisionist. The best evidence was available with accused-revisionist, but it was withheld from the Court. Therefore, evidence of Rakesh Kumar and Pawan Kumar was rightly believed by the Courts below, holding that the story put-forth by complainant regarding supply of material and payment in lieu of material, is correct. The lower appellate Court has observed that accused-revisionist did not appear in the witness box to deny that he had not place any order for supply of aluminium sections and that he never received the goods. Therefore, his bald suggestion to the witnesses in this regard cannot be believed. His story that some fraud was committed by one of the directors of his company, also cannot be believed since it is proved that cheque was issued for discharge of legal liability. If any fraud was committed in the year 2005 by said Parmod Arora and said blank cheques were misused, there is no reason why accused did not stop the payment of said blank cheques and why he did not make any complaint to the police or to the bank, giving the numbers of cheques lying with said Parmod Arora. Therefore, mere suggestion to the

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witness was rightly discarded by the Court. Accused also withheld his account books from the Court which could show as to whether payment on account of receipt of said material was recorded in the accounts books. Therefore, I am of the view that both the Courts below rightly held that cheque in question was issued in discharge of legal liability. Accused admits his signatures on the cheque and heavy burden was upon him to prove the absence of legally enforceable debt, which he failed to prove. Therefore, there is no ground to interfere in the concurrent findings recorded by two Courts below.

The learned counsel for revisionists has relied upon the authorities of Apex Court in Kumar Exports Versus Sharma Carpets, (2009) 2 Supreme Court Cases 513, M/s Indus Airways Pvt. Ltd. and others Versus M/s Magnum Aviation Pvt. Ltd. and another, 2014 (2) RCR (Civil) 611, Single Bench authority of High Court of Bombay (Aurangabad Bench) in Vishnupant S/o Chaburao Khaire Versus Kailash S/o Balbhir Madan, 2010 (112) BOMLR 564 and it has been argued that legal liability has to be proved.

I am of the view that it depends upon facts of each case whether the legal liability is proved or not. In the present case, after examining the evidence recorded by the lower Court and after going through the findings recorded by both the Courts below, this Court concurs with the view taken by both the Courts below that in the present case, it is proved that cheque was issued in discharge of legally enforceable debt. As such, there is no ground to interfere in the concurrent findings recorded by two Courts below. Hence, revision is dismissed. Revisionist be rearrested and committed to jail to undergo the remaining part of sentence.

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Rs. 10,00,000/- deposited by accused before the learned Registrar, General,
be released to him immediately.

(KULDIP SINGH)
JUDGE

13.12.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No