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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decision on : 27th April, 2017

\+ CRL.L.P. 86/2015

SPACEVISION IMPEX PVT LTD ..... Petitioner

Through: Ms. Parvinder Khatra & Mr. Dinesh Sharma, Advs.

versus

ARUN VYAPAR UDYOG PVT LTD & ORS..... Respondents

Through: Mr. Tanveer A. Mir, Adv.

\+ CRL.L.P. 88/2015

SPACEVISION IMPEX PVT LTD ..... Petitioner

Through : Ms. Parvinder Khatra & Mr. Dinesh Sharma, Advs.

versus

ARUN VYAPAR UDYOG PVT LTD & ORS..... Respondents

Through: Mr. Tanveer A. Mir, Adv.

\+ CRL.L.P. 89/2015

SPACEVISION IMPEX PVT LTD ..... Petitioner

Through: Ms. Parvinder Khatra & Mr. Dinesh Sharma, Advs.

versus

ARUN VYAPAR UDYOG PVT LTD & ORS..... Respondents

Through: Mr. Tanveer A. Mir, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These three criminal leave petitions arise out of three identical judgments rendered on 30.10.2014 by the court of the Metropolitan Magistrate (South)-01 on the files of three similarly placed complaint

cases, they having been registered as CC Nos.1261/1, 1258/1 and 1264/1, each alleging offences punishable under Section 138 of the Negotiable Instruments Act, 1881 respecting three different cheques, all statedly issued by the respondents (accused persons before the trial court) in favour of the petitioner (complainant before the trial court), they being cheque nos.401481 dated 02.09.2005, 401482 dated 07.09.2005 and 401495 dated 12.09.2005 for Rs.20,00,000, Rs.20,00,000 and Rs.29,95,976/- respectively, each said cheque having been proved in the course of trial of these cases as Ex. CW-1/C. It is beyond dispute, as proved by cogent evidence, that the said cheques when presented for encashment by the complainant were returned by the concerned bank with the remarks "payment stopped by drawer", the return memo respecting each having been separately proved in the course of trial of these cases as Ex. CW1/D. Similarly, it is beyond dispute, as further proved by clinching evidence, that demand notices were issued by the complainant which were duly served but the respondent (accused persons before the trial court) did not make any payment within the statutory period and this was followed by institution of the three complaint cases.

2. After preliminary inquiry, the accused persons were summoned and put to trial on the basis of notices under Section 251 of the Code of Criminal Procedure, 1973 (Cr. PC) framed on the files of the respective criminal complaints on 23.08.2007, 02.03.2007 and 02.03.2007 respectively.

3. It is conceded at the hearing that the cheques were issued by the respondents in favour of the petitioner concerning High Seas Sales

Contracts dated 21.04.2005, 05.05.2005, 19.05.2005, 26.05.2005 and 02.06.2005 for purchase of heavy melting steel scrap at Chennai on High Seas basis.

4. The record would show that evidence was led by both sides. The complainant examining Ravi Gupta (CW-1), the authorised representative and one Gurusharan Singh (CW-2), one of the Directors. The accused persons, on the other hand, examined Kapil Bhatia (DW-1), one of the persons who were Directors of the complainant company at the time of handing over of the cheques, he, however, having later resigned from the directorship in November 2005.

5. The trial court, by separate judgments, each passed on 30.10.2014 held that the complainant had failed to prove its case respecting any of the three cheques in the said complaint cases and thus acquitted the respondents. It is the said finding returned on the basis of identical reasoning by the trial court, which is sought to be assailed by the complainant, seeking to challenge the acquittal by criminal appeals for institution of which leave is sought in terms of Section 378(4) Cr. PC by the petitions at hand.

6. On notice, the respondents have appeared through counsel. The learned counsel for the complainant (petitioner) and for the accused persons (respondents) have been heard at length and record has been perused.

7. The complainant did not prove nor made any averments with regard to the fact that the cheques in question had been handed over

on 28.06.2005 under the cover of a formal communication issued under the signatures of a director of the first respondent. During the course of evidence of CW-1, the said document was shown to the witness, the document having been referred to in the course of evidence as Ex. CW1/D6. He conceded that the said letter dated 28.06.2005 appeared to have been issued by the first respondent but he was unable to admit or deny if the cheques under the cover of this communication had been received by Mr. Kapil Bhatia (DW-1) as appeared to be the case on the endorsement appearing thereupon. He, however, admitted that the cheques in question had been given either to Mr. Kapil Bhatia (DW-1) or to Mr. Gurusharan Singh (CW-2), the other director of the complainant company at the relevant point of time.

8. When CW-2 entered the witness box, the same very document Ex. CW1/D6 was shown to him as well during the cross-examination. He gave a very vague answer stating that he would "not deny" that the said document Ex. CW1/D6 bears the signatures of Mr. Kapil Bhatia (DW-1) at the endorsement at point 'A' whereby the cheques had been taken over by the said person for and on behalf of the complainant company.

9. The respondents, however, proved the fact by positive evidence by getting Mr. Kapil Bhatia (DW-1) summoned and examined in defence. During his testimony, DW-1, concededly a director of the complainant company, at the relevant point of time, admitted that he had received the said cheques from the respondents in terms of the

said letter Ex. CW1/D6 on 28.06.2005 during his visit to Chennai by putting his signatures acknowledging the receipt.

10. Though the respondents had taken a number of defences at the trial, what clinches the issue in its favour leading to the acquittal order is the fact that the document (CW1/D6) whereby the cheques had been handed over by the respondents to the complainant company had clearly indicated that these cheques were not to be presented "without the written consent" of the first respondent "until accounts are settled". There is no evidence led indicating settlement of accounts at any stage. There is no evidence led indicating any communication from the respondents giving a go-ahead to the complainant for the cheques to be presented for encashment irrespective of the position that the accounts had not been settled. Further, there is no evidence adduced indicating in any manner whatsoever that the complainant had notified the drawer of the cheques that it was going ahead with the presentation of the cheques notwithstanding the fact that the accounts had not yet been settled. In these circumstances, it is clear that the cheques were presented prematurely.

11. The view taken by the trial court, therefore, cannot be faulted. Thus, these leave petitions are devoid of merit and are dismissed.

(R.K. GAUBA)
JUDGE

APRIL 27, 2017
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