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

\+ CRL.L.P. 607/2012

BHAN TEXTILES LTD. ..... Petitioner

Through: Mr.Amit Trikha, Adv.

versus

ASHU IMPEX & ANR. ..... Respondents

Through: Mr.T.R.Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

<u>O R D E R</u>

% 08.08.2017

A complaint was lodged by the petitioner, which is a private limited company through Sh.Rakesh Bhan, its authorised representative, regarding dishonour of a cheque bearing No.981717 dated 30.05.2008 issued by respondent No.2 on behalf of respondent No.1, for an amount of Rs.34,684/- drawn on Punjab National Bank Ltd, Laxmi Nagar branch, New Delhi in favour of the complainant. The aforesaid cheque was dishonoured because of insufficiency of funds.

The case of the petitioner is that the respondents had placed orders for computer embroidery work. For having worked for the respondents, invoices/bills for a total consideration of Rs.36,448.20/- was raised by the complainant company. As against the aforesaid invoices/bills, the cheque in question was issued by respondent No.2 which was dishonoured.

Three witnesses were examined on behalf of the complainant/petitioner. They are the complainant, Suresh Chand, a clerk in

Punjab National Bank, ICD, Patparganj, Delhi and one Vidya Lal, record keeper, J&K Bank Ltd, Okhla.

The invoices/bills were however not brought on record by the complainant/petitioner.

The respondents did not lead any evidence in their defence.

Respondent No.2, in his statement under Section 313 of the Code of Criminal Procedure denied the receipt of any legal notice and stated that the cheque in question was issued in advance as security for the work of embroidery to be done by the complainant. Since the work was delayed and the goods were not delivered to the respondents, there was no question of making payment against the invoices/bills raised by the complainant.

The Trial Court thus found that the respondents have rebutted the presumption under Section 139 of the Negotiable Instruments Act.

It was urged by the respondents that after the embroidery work against the order of the respondents was completed and delivered to the respondents, there was no reason for the complainant/petitioner to have withheld the invoices/bills and the delivery challans along with complaint. It was further urged that the cheque in question was a post dated cheque which was issued in advance, for security which could have been encashed only on the fulfilment of the work by the complainant and to the satisfaction of the respondents. Since the same was not done and no proof has been offered for the same, the very existence of the availability of a legally enforceable debt becomes doubtful.

The respondents, though have not led any specific evidence but have raised issues which were germane to the decision of the case. It was upon the complainant/petitioner, on a reverse onus clause, to prove that the cheque in question was towards discharge of the debt. Times without number, it has been held that in all cases, security cheques cannot fall outside the scope of Section 138 of the Negotiable Instruments Act but every case has to be seen in its specific factual context. It is not unknown that in a work contract, the person who is supposed to complete the work, demands a security cheque so as to ensure that after the work is over, the same is accepted by the person giving order. That does not necessarily mean that the cheque was towards payment of the work done by the complainant.

The Trial Court has rightly acquitted the respondents.

This Court does not find good reasons to interfere with the same.

Leave is declined.

ASHUTOSH KUMAR, J

AUGUST 08, 2017

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