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

\+ CRL.L.P. 689/2015

M/S ANU PRODUCTS LTD.

..... Petitioner

Through: Mr. M.P. Sharma, Advocate.

versus

S TARSEM SINGH

..... Respondent

Through: Mr. Ajaypal Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **02.02.2017**

The petitioner seeks leave to appeal against the judgment dated 20.08.2015 passed by the learned MM (NI Act), Central, Tis Hazari Courts Complex, Delhi in Case No.3139/2010, whereby the respondent/ accused has been acquitted in the complaint case preferred under Section 138 of the NI Act.

The case of the complainant is that the complainant is engaged in the business of manufacturing insecticides and pesticides. The accused through his proprietary firm used to purchase the products of the complainant. The complainant claimed that during the course of dealings, a sum of Rs.2,69,489/- became due and payable by the accused to the complainant. In discharge of the said liability partially, the cheque in question for

Rs.1,22,000/- dated 05.12.1999 was stated to have been issued by the accused which, upon presentation, was dishonoured on account of insufficient funds. Since the amount was not paid despite issuance of statutory notice, the aforesaid complaint came to be filed.

The accused was summoned and pleaded not guilty. After the complainant had led its evidence, the statement of the accused was recorded under Section 313 Cr.P.C. The Trial Court has set out the defences taken by the accused in the impugned judgment, which are as follows:

> *"2.1 - Admitted*
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> *2.1.1. The accused has admitted being the drawer of the cheque in question, having drawn the same from account of his proprietorship firm M/S Ghuman Pesticides and also his signatures on the cheque in question. The accused has also admitted having written the name of the payee on the cheque and also on the interlineation/correction in the payee column and having signed the same.*
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> *2.1.2. Admitted the factum of dishonor of the cheque on the ground of insufficiency of funds, and also conceded that at the relevant point of time, he did not have the requisite funds in his account.*
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> *2.1.3. Admitted the receipt of legal demand notice and relied upon his reply to the same. (Led on record as Ex. DW1/7).*
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> *2.2 - Controverted*
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> *2.2.1. The accused denied any legally enforceable debt or liability with respect to the cheque in question. He contends that this cheque was issued as security at the time of commencement of business transactions with the complainant firm. He claims that he is under no monetary liability towards the complainant and the present case is nothing but an abuse of the process of law and a case of misuse of cheque. The accused further contended that, the statement of accounts relied upon by*

the complainant is false and fabricated and does not set off various amounts due to him by the complainant.

2.2.2. The accused claims in his defence that the cheque in question is one of the four cheques issued by him as security way back in 1994 at the time of commencement of the business. He argued that, at the time of presentation of the cheque and currently, his liability towards the complainant is to the tune of Rs. 3,900/- only, which he is ready to pay.

2.2.3. To buttress the defence of the non existence of liability to the extent claimed by the complainant, the accused has argued that he has been charged for the goods by the complainant under Invoice No. 1395, whereas the same have never been received by the accused. On the contrary, these goods are stated to have been received by one Mr.Udayvir Singh (stated to be the employee of the complainant company) from the transporter (Surjit Goods Carrier) on 18.11.1999. Therefore, the liability for those goods cannot be fastened on him, is the claim of the accused. To buttress this, the accused has relied upon Mark 'DC' which purportedly is an acknowledgment of receipt of goods by Udayvir Singh. The accused argues that, later when he came to realise that the liability for these goods has been wrongly foisted on him and the complainant has debited the said amount in his account, he approached the transporter, who provided him a copy of this letter. He argues that, in this regard, intimation was also sent to the complainant through the counsel of the accused, disclaiming any liability for these goods. The copy of the said intimation is led in evidence as Ex. DW1/1, with the courier receipt being Ex. DW1/2, which is stated to be bearing the stamp and signatures of the complainant's representative, as proof of receipt.

2.2.4. The accused has also argued that he was entitled to a price correction for a product '24D chemical'. In this regard, the accused relies on a letter issued by complainant's company's employee Prem Singh to that effect. The letter has been led on record as Ex. DW1/3. The total price correction came out to be Rs.20,000/-, which the accused submits that he *was never given benefit of.*

2.2.5. The accused further testified that one Mr.Darshan Singh, employee of the complainant company, issued credit notes to him, on the letter head of the complainant which have been led in evidence as Ex. DW1/4. The accused also argues that, he also had to face a prosecution under the insecticides act, on account of the fact that, the material supplied by the complainant was sub-standard and not upto specifications & standards. The accused, argues that he was subsequently acquitted from the case as he was merely retailing the products, without adding anything of his own and complainant company was proceeded against, in that prosecution. The accused submits that the complainant company later agreed to recoup him for the expenses incurred by him for his defence in those proceedings. The accused argues, that, the credit for the expenses incurred by him has not been given to him in his accounts. To substantiate this, he relies on a copy of the judgment of the Ld.Trial Court at Gurdaspur, acquitting him of the charge, led in evidence as Ex. DW1/6.

2.2.6. In addition to the defense of non existence of legal liability. The accused also argues that the present complaint has not been filed by an authorised person. The complaint, therefore, is still born and a conviction cannot be based upon it."

The Trial Court held that the aforesaid defence of the accused was probablised and, therefore, the presumption with regard to the existence of the outstanding debt in respect of which the cheque in question was issued, was discharged.

The submission of learned counsel for the petitioner/ complainant is that the issuance of the cheque in question itself is not disputed. Section 139 of the NI Act raises a presumption that the cheque had been issued in respect of an outstanding liability.

He further submits that the defence of the accused, that the goods under Invoice No.1395 with the transporter delivered to the accused were never false. He submits that since the GR forms were not available with the accused, on the instructions of the petitioner, the goods were delivered to the accused through the petitioner's agent even without the GR forms. In this regard, reference is made to the document mark DC, referred to in the above quotation from the impugned judgment.

The aforesaid submission of learned counsel for the petitioner does not impress this Court for the reason that, even if the story of the petitioner were to be accepted that the transporter was required to deliver the goods without the GR forms, there is nothing to show that after obtaining delivery from the transporter, representative of the petitioner had further delivered the goods to the accused. Learned counsel for the accused has pointed out that before the Trial Court, the complainant has denied the document mark DC, which is now referred to and relied upon by him. It is pointed out by learned counsel for the accused that the petitioner also did not produce the Invoice No.1397 which, if produced, would have shown that the consignee was not the accused. This shift in stand of the complainant further probablises the defence of the accused that the complainant had sought to use a cheque issued earlier as a security, to realise even contentious amounts and the quantification of the debt was itself seriously disputed.

Learned counsel for the petitioner has next argued that even the notices claimed to have been issued by the accused Exhibit DW-1/1 and DW-1/7 appear to be forged & fabricated.

Pertinently, when these documents were produced and led in evidence by the accused, the petitioner/ complainant did not seek to lead any evidence

– expert evidence, or otherwise, to show that these documents relied upon by the accused were forged and fabricated.

Having perused the impugned judgment in the light of the aforesaid, it cannot be said that the defence of the accused was not probablised in the facts of the present case and the impugned judgment, therefore, does not call for interference.

Dismissed.

VIPIN SANGHI, J

FEBRUARY 02, 2017

B.S. Rohella