

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

CRM-A-2036-MA of 2015.
Decided on:-August 01, 2018.

M/s Kwaliti Heat Treatment Works.

.....Applicant.

Versus

M/s D.K. Auto Industries and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Rakesh Bhatia, Advocate
for the applicant.

HARI PAL VERMA, J.

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure for leave to appeal, against the judgment dated 20.08.2015 passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the respondent No.2 Deepak Kumar, proprietor of respondent No.1 i.e. M/s D.K. Auto Industries, Ludhiana (hereinafter mentioned as the accused) was acquitted of the charge framed against him in a criminal complaint filed by the applicant M/s Kwaliti Heat treatment Works, through its proprietor S. Balbir Singh (hereinafter mentioned as the complainant) under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act).

Briefly stated, the complainant had filed a complaint under Section 138 of the Act with the averments that the accused No.1 is a proprietorship firm and the accused No.2 is its proprietor and is a

manufacturer of motor parts and tractor parts, specialist in non-ferrous bushes and spring pines. The accused had hired the services of the complainant for heat treatment and got work done worth Rs.31,000/-. In order to discharge the liability, the accused issued a cheque bearing No.142496 dated 23.09.2013 for an amount of Rs.30,000/- drawn on Punjab National Bank, Dhandari Khurd, Ludhiana in favour of the complainant. However, when the said cheque was presented by the complainant through his banker for encashment, the same was received back dishonoured with the remarks "Payment Stopped by Drawer" vide bank memo dated 29.11.2013. Earlier also, the cheque was presented on 25.09.2013 and 17.10.2013, but the same was received back dishonoured. Accordingly, a legal notice dated 11.12.2013 calling upon the accused to make the payment of cheque in question was issued, but as the cheque amount of Rs.30,000/- was not paid to the complainant within 15 days from the date of receipt of the notice, the present complaint was filed.

After recording the sworn statement of the complainant, the accused was summoned to face trial under Section 138 of the Act vide order dated 07.02.2014. Finding a *prima facie* case, notice of accusation under Section 138 of the Act was served upon the accused vide order dated 11.07.2014 by the trial Court, to which the accused did not plead guilty and claimed trial.

In support of his case, the complainant examined himself as CW1 and placed on record the documents i.e. cheque Ex.C1, memo Ex.C2, legal notice Ex.C3, postal receipts Ex.C4 and Ex.C5 and copy of bill No.708 dated 03.10.2013 for Rs.31,000/- is Ex.C6, form VAT 23 as Ex.C7 and balance sheet Ex.C8.

In his statement under Section 313 Cr.P.C., the accused denied the allegations and pleaded his false implication. He has stated that he never hired the services of the complainant for heat treatment and no work was ever done by the complainant. The cheque was never given for payment of heat treatment. There were oral dealings for the purchase of induction machine and in furtherance thereof, he gave the cheque in question for advance payment to the complainant. The deal could not be finalised because capacity of the machine was not enhanced by the complainant as per the requirement. The cheque in question was misused by the complainant. In his defence, the accused examined Gurmeet Singh, Senior Manager, Punjab National Bank, Dhandari Khurd, Ludhiana as DW1 and produced on record the letter issued by Deepak Kumar as Ex.DW1/1, account statements Ex.DW1/2 and acknowledgement of stop payment Ex.DW1/3. He further examined Lalik Kumar, broker as DW2, who tendered into evidence his affidavit Ex.DB.

After considering the evidence produced on record and hearing arguments of both the sides, learned trial Court vide judgment dated 20.08.2015 acquitted the accused of the charge framed against him.

Aggrieved against the aforesaid judgment dated 20.08.2015 passed by learned Magistrate, the complainant has filed the present application under Section 378(4) Cr.P.C. for leave to appeal.

Learned counsel for the complainant has argued that the impugned judgment dated 20.08.2015 passed by the trial Court is not legally sustainable and is liable to be set aside. While dismissing the complaint, the trial Court has wrongly reached the conclusion that the complainant has not proved the ingredients of Section 138 of the Act. In fact, the trial Court has

not appreciated that the complainant proved his case by producing account books, balance sheet and invoice.

He has further argued that the trial Court wrongly came to the conclusion that the accused has succeeded in rebutting the presumption in favour of the holder of the cheque especially when he has not produced any complaint that any demand was raised by him to return the cheque. He has also relied upon *Bantam Chand Chopda Versus Mahendra Kumar Punkhraj Kothari and another 2008(23) RCR (Criminal) 603* and *Yadwinder Singh Versus Raj Kumar Anand 2013(4) RCR (Criminal) 163* to contend that once a cheque is issued by the drawer, the presumption under Section 139 of the Act must follow and merely because the drawer issued notice to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138 of the Act by the drawee or holder of the cheque in due course.

I have heard learned counsel for the complainant.

The pleaded case of the complainant is that the accused hired services of the complainant for heat treatment and got work done worth Rs.31,000/- for which the cheque in question was issued. In order to discharge his liability, the accused had issued the cheque in question for an amount of Rs.30,000/-, but the same was dishonoured on presentation before the bank.

Perusal of the record reveals that in order to prove his case, the complainant has appeared in the witness box as CW1 and has also tendered documents Ex.C1 to Ex.C8. The bill Ex.C6 shows that the same was issued for an amount of Rs.31,000/- and this amount has also been shown by the complainant in his balance sheet Ex.C8. However, the cheque in question had

been issued by the accused for an amount of Rs.30,000/-. The complainant has not explained about the remaining payment of Rs.1,000/-. In his cross-examination, he has admitted that it was his first dealing with the accused and despite that he accepted the cheque and did not ask for payment in cash.

On the other hand, the accused has pleaded that the cheque in question was issued for the deal of induction machine, but the said deal could not be finalised and a letter was issued by the accused for stopping of payment. In support of his defence, the accused examined Gurmeet Singh as DW1, who proved the statement of account Ex.DW1/2, which shows that there was sufficient balance in the account of the accused on 29.11.2013 i.e. the date when the cheque in question was dishonoured on account of "Payment Stopped by Drawer". The accused had also examined Lalit Kumar as DW2, who deposed that he is a broker of old induction machines. He further deposed that the cheque in question was related to the deal of induction machine, but no machine was sold as the capacity of the machine was not in consonance with the requirement of the accused.

Record further reveals that the accused has taken the plea regarding the deal of induction machine from the very beginning till the end of the case. While writing a letter to the bank authorities for stopping of the payment, the accused mentioned the same reason regarding the deal of induction machine. Thus, the complainant has failed to establish his claim of doing the work of heat treatment for the accused, whereas the accused has raised a sufficient defence in his favour. It is a settled law that the prosecution must prove the guilt of an accused beyond all reasonable doubts, but in the

present case, possibility of false implication of the accused cannot be ruled out and as such, no legal liability can be fastened upon the accused.

So far as the law laid down in *Bantam Chand Chopda's case (supra)* and *Yadwinder Singh's case (supra)* is concerned, the same is not applicable in the facts and circumstances of the present case as the facts of those cases were altogether different. In the present case, the complainant has failed to show any misreading of evidence by the learned trial Court and has not been able to point out any legal error in the judgment under challenge, which may warrant interference by this Court. Thus, this Court does not find any illegality in the impugned judgment dated 20.08.2015 passed by learned trial Court.

The present application is, consequently, dismissed. Leave to appeal is declined.

August 01, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No