IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-49-MA of 2014 (O&M)
Date of decision : 22.2.2018
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M/s Richa Industries Ltd.
................Petitioner

vs.

M/s Eastern Uniforms and another
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

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H. S. Madaan, J. (Oral)

M/s Richa Industries Ltd., VPO Kawnra, Kheri-Jasana Road, Faridabad had filed a criminal complaint under Section 138 of the Negotiable Instruments Act, against M/s Eastern Uniforms, 2/10 Kalkaji Extension, New Delhi and Sanjiv Sharma, as its partner on the allegations that complainant company is engaged in the business of dying/bleaching, processing and sale of fabrics etc. and accused had been placing orders for getting job works done from it, from time to time, confirming the receipt of the job works/goods and acknowledging their liability to pay the outstanding dues; that accused in order to make payment of dues and discharge of legal liability, issued cheques bearing Nos. 758153 dated 2.8.2009 for Rs.1,00,000/-, cheque No. 758154 dated 5.8.2009 for Rs. 1,00,000/-, cheque No. 758160 dated 7.8.2009 for Rs. 1,00,000/-, cheque No. 758216 dated 29.8.2009 for Rs. 2,00,000/- and cheque No. 758217 dated 1.9.2009 for Rs.2,00,000/- dated 1.9.2009 for Rs.2,000/- all drawn on Punjab National Bank, Kalkaji, New Delhi, in favour of the complainant. However, on presentation, the cheques were returned to the complainant with memo of the bank dated 22.12.2009, having remarks 'funds insufficient'. Thereafter complainant served a legal notice dated 28.12.2009 upon the accused for making payment of the cheque amounts within 15 days of the receipt of notice, but to no effect, as such the complaint was filed before Judicial Magistrate Ist Class, Faridabad. After recording of preliminary evidence, the accused were summoned who put in appearance. Notice of accusation was served upon the accused to which he pleaded not guilty and claimed trial. The complainant led oral as well as documentary evidence.

Statement of the accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against such accused were put to him. In his statement, the accused pleaded innocence stating that the cheques in question had been given as security for the purpose of supply of finished material but the complainant neither supplied the finished material nor returned the cheques in question and rather used against him. There is no legal debt or liability. The accused No.2 got his statement recorded as DW-1 and brought on record several documents.

After hearing the arguments, the trial Magistrate acquitted the accused of the notice of accusation served upon them.

The complainant felt aggrieved and has approached this Court by way of moving an application under Section 378 (4) Cr.P.C. seeking special leave to appeal against the impugned judgment, notice of the same was given to the respondent, who was served, but did not put in appearance.

I have heard learned counsel for the applicant.

Learned counsel for the applicant has argued that the trial Magistrate has mainly relied upon the E-mail messages sent by the accused, so as to come to the conclusion that the cheques in question had not been issued on account of discharge of financial liability. That however it was done wrongly, since requirements under Section 65 B were not satisfied, in as much as, the requisite certificate was not obtained. In support of such contention, he has referred to Apex Court judgment reported as ***Anvar P.V. vs. P.K. Basheer and others 2015 (1) SCC (Civil) 27.***

I have gone through the judgment referred to by the learned counsel for the applicant, and have considered the arguments advanced by him, besides going through the record carefully and I find that the trial Magistrate has observed sole plea of defence put forwarded on behalf of the accused is that the cheques in question had been given as a security to the complainant and they were never issued in discharge of any debt or liability. Since the work was not executed within time, a dispute has arisen between the parties and complainant misused the cheques in question, which had been given as a security, despite instructions were given by the accused not to do so. Furthermore, it is case of the accused that complainant was in possession of its unprocessed fabric, which was not returned. Learned trial Magistrate has observed that case of the complainant is that the job work of dyeing fabric had been completed and cheques in question were drawn by accused in favour of the complainant company in discharge of his liability to pay for the said job work. The trial Magistrate is referring to the Apex Court judgment ***Hiten P. Dalal vs. Bratindranath Banerjee 2001 (3) RCR (Criminal) 460***, where in it was observed that :-

> "Thus the two types of presumptions discussed by the Apex Court in para-23 makes it clear that the presumption as envisaged under Section 139 is a statutory and mandatory presumption and not the discretionary presumption. The mandatory presumption can not be dislodged merely by bare explanation which may appear only plausible as it is observed. By the Apex Court that 'a fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists.' Thus, in view of this, unless there is cogent evidence led by the accused it can not be said that he has discharged the burden."

Another Apex Court judgment in ***K.N. Beena vs. Muniyappan and another 2001 (4) RCR (Criminal) 545*** has also been referred in that regard.

Learned trial Magistrate has observed that after going through the oral evidence of both CW-1 and DW-1 besides other documentary evidence, produced on the record, he is of the considered view that accused has succeeded in rebutting the presumption under Section 139 of the Act, in as much as, when the accused sent his reply Exhibit C-10 to the legal notice dated 28.12.2009 of the complainant, he stated therein that complainant did not deliver the goods on time, as per the assured quality and colour standard whereas simultaneously, while holding the stock of accused, presented the cheques in question for encashment and further that several deliveries of material made by the complainant were not as per the agreed and approved standards. Inter alia it was mentioned that accused had clearly told the complainant not to present the cheques in question, since inspite of receipt of a demand draft of Rs. 3 lacs, the complainant did not return the complete unprocessed fabric of the accused. The said reply Exhibit C-10 was duly received by the complainant and rejoinder dated 27.1.2010 Exhibit C-11 was sent by the complainant, wherein without controverting any of the averments contained in the said reply, the complainant company asked the accused to meet them in their office on 3.1.2010 for amicable settlement of the issue. This fact was corroborated by the E-mails sent by accused to the complainant. Under the circumstances, E-mails have been used as corroborative piece of evidence and trial Magistrate has not relied upon those exclusively to reach the conclusion that the presumption under Section 139 of the Negotiable Instruments Act stands rebutted, therefore, authority referred to by learned counsel for the applicant does not help him much.

I conclude that the judgment passed by the trial Magistrate is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Thus no ground for grant of special leave to appeal to the complainant is made out. The application in that regard stands dismissed.

(H.S. Madaan)
22.2.2018 **Judge**
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No