

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-718-MA-2015 (O&M)

Date of decision: 20.03.2018

Balwinder Singh

...Applicant/complainant

Versus

Jasmeet

...Respondent/accused

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S.Randhawa, Advocate
for the applicant.

Mr. Alok Jagga, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this application is to the impugned order dated 10.02.2015 passed by the trial Court, whereby, the respondent-accused has been acquitted in a criminal complaint filed under Section 138 of the Negotiable Instruments Act.

Brief facts of the case are that the applicant-complainant filed a complaint under Section 138 of the Negotiable Instruments Act with the allegation that he is doing the business under the name and style of M/s Girn Oil Carrier and accused used to hire vehicles from the complainant for transportation and in discharge of her liability, the accused had issued cheques bearing No. 086358 dated 29.07.2012, cheque bearing No.086359 dated 10.08.2012 amounting to Rs.50,400/- each and cheque bearing No.086313 dated 23.06.2012 amounting to Rs.71,500/- drawn on UCO Bank, Sector -22-D, Chandigarh. It is further stated in the complaint that on presentation of the cheques with the Bank, the same were dishonoured with the remark "Exceeds Arrangements" vide memo dated 16.08.2012.

Thereafter, the complainant issued a legal notice on 23.08.2012 and when the accused failed to make the payment, he filed the present complaint.

After, the applicant has led the preliminary evidence, the trial Court, summoned the respondent-accused to face trial under Section 138 of the Negotiable Instruments Act. In pre-charge evidence, complainant Balwinder Singh has examined himself as CW-1 and tendered into evidence his affidavit Ex.CW`1/A. He also proved on record the cheques Ex.C1 to Ex.C3 and memo Ex.C-4 and closed the evidence.

The respondent-accused in the statement under Section 313 Cr.P.C., denied all the incriminating evidence and pleaded her innocence. However, no evidence was led by the accused in defence.

The trial Court, thereafter, vide impugned order dated 10.02.2015 acquitted the respondent-accused holding that the applicant-complainant has failed to prove that he was having any documentary evidence that the accused was under a legally enforceable liability to make the payment mentioned in the cheque. It was also held by the trial Court that respondent-accused-Jasmeet Kaur has been arrayed as an accused in capacity of being the authorized signatory of M/s Bromos Organics. However, the Company or Firm has not been arrayed as an accused in the complaint.

Counsel for the applicant has argued that since the cheque has been issued by the respondent being authorized signatory of M/s Bromos Organics, she is liable to be prosecuted on account of dishonour of the cheque. Even, if the Company or Firm M/s Bromos Organics has not been arrayed as an accused in the complaint. Counsel for the applicant further argued that once the issuance of cheque and the signature are added by the

accused person, the presumption under Section 138 of the Act, be drawn in favour of the complainant. It is further submitted that from the statement of CW-1 Balwinder Singh, it is proved that there was a business dealing between the complainant and the accused as the complainant is doing the business of transportation and the accused used to hire the vehicles of the complainant for transportation of goods and therefore, it is proved that the cheques were issued in discharge of the outstanding amount due against the accused.

Counsel for the respondent has argued that the applicant has failed to prove any documentary evidence that the applicant had any outstanding due against the accused for which the cheques were issued and therefore, on account of failure on the part of the complainant, to prove any existing debt or legally enforceable liability, the accused cannot be held guilty. It is further submitted that as per explanation attached thereto, the provision of Section 141 of the Act, offences by Company includes any body corporate and a Firm or association of individuals and therefore, in the absence of M/s Bromos Organics being impleaded as one of the accused, no liability can be fastened on the respondent being authorized signatory of the cheque. Learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in **2012 (2) RCR (Criminal) 854 Aneeta Hada Vs. M/s God Father Travels Tour Pvt. Ltd.**, to submit that in case of dishonoring of cheque issued by a Company which includes a firm, prosecution of the Director of the Company without arraying the Company/Firm as an accused is not maintainable.

After hearing learned counsel for the parties, I find no merit in the present application.

Since, the applicant has failed to implead the Company M/s Bromos Organics as an accused and has only impleaded the respondent in the capacity of a representative/authorized signatory of the Company, the trial Court has rightly held that the complaint is not maintainable. In view of the judgment of the Hon'ble Supreme Court in *Aneeta Hada's case (Supra)*, I find no illegality in the finding recorded by the trial Court.

It is also apparent that the applicant has led no documentary evidence or any other agreement between the parties, to show that the applicant was providing transportation service to the respondent-accused. In the cross-examination of CW-1, it is admitted that he was not maintaining any record regarding the number of trips for which he has transported the goods and further admitted that he cannot produce any such documentary evidence. Therefore, the trial Court is rightly held that there was no legally enforceable debt or liability in existence for which the respondent can be held liable on account of dishonouring of the cheques.

In view of the above, I find no merit in the arguments raised by counsel for the applicant and further, I find no illegality in the impugned order of acquittal passed by the trial Court.

Appeal stands dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

20.03.2018
Hemlata

Whether speaking/reasoned	Yes
Whether reportable	No