

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

% Reserved on: 6th February, 2018
Decided on: 5th September, 2018

+ **CRL.A. 442/2017**

SHARDA CAPSEC LTD

..... Appellant

Represented by: Mr. Ravinder Singh, Advocate.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Represented by: Ms. Meenakshi Chauhan, APP
for State.
Mr. Satender Kumar Garg,
Advocate for Respondent No.2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. During the course of trial the petitioner as complainant impleaded four accused being respondent Nos. 2 to 5 herein. Respondent Nos. 3 to 5 could not be arrested and were declared proclaimed offender and thus the trial proceeded only against respondent No.2, a company incorporated under the Indian Companies Act. Respondent No.2 contested the complaint through its authorized representative.

2. Case of the appellant in the complaint filed under Section 138 Negotiable Instruments (in short 'NI Act') before the learned Metropolitan Magistrate was that the appellant and respondent No. 2 both are the companies registered under the Companies Act. Respondent No. 2 through its Director Prem Chand Gupta approached the appellant company and took a financial loan of ₹10.03 lakhs and a buy back agreement to this effect was executed between the parties on 1st October, 1996 which was executed before the learned Trial Court as Ex. CW-1/3. Since the respondent No. 2

company failed to honour the said buy back agreement and did not buy back the shares @12.50 on 15th October, 1997 as agreed, the appellant sent oral/written reminders vide letters dated 15th October, 1997, 29th January, 1998 and 29th April, 1998 and registered letters dated 27th May, 1998 and 15th July, 1998 duly exhibited before the learned Trial Court but no reply was received from the respondent No.2. Prem Chand Gupta met Chairman-cum-Managing Director of the appellant company CW-1 and reconciled the statement of account and agreed to repay the loan amount along with the quarterly compound interest @3% and issued a cheque number 486831 dated 21st December, 1998 for an amount of ₹17,02,015/- drawn on State Bank of India, Uttar Pradesh towards discharge of his liability and took back all the shares lying with the appellant. The said cheque was issued by Prem Chand Gupta on behalf of respondent No. 2 herein and was exhibited as Ex.CW-1/9 before the learned Trial Court. On presentation during the validity period the cheque was returned unpaid with the remarks “Refer To Drawer”. Statutory demand notice was sent which was received by the respondent No. 2 and its Director who sent the reply and raised false and frivolous pleas. The legal notice and the reply thereto were exhibited as Ex. CW-1/13 and CW-1/15 respectively.

3. The plea taken by the respondent Nos. 2 in the reply dated 12th February, 1999 was that though a buy back agreement was entered into however, a blank signed cheque was procured by the appellant in connivance with one of its staff members and there was no legally enforceable liability against the respondent no. 1 and in favour of the appellant. The case of the respondent No. 2 is that there is no provision for interest in the buyback agreement Ex. CW-1/3 much less of 3% compound

interest per annum. No request was made to respondent No. 2 to buy back the shares and repay the amount in terms of the buyback agreement along with the 3% quarterly compound interest. Cheque amount in dispute was ₹17,02,015/- as against the alleged liability of ₹10,03,000/- even as per the complainant which is highly improbable. It is the case of the respondent No.2 that the defence taken was more probable and trustworthy. Further the appellant failed to prove the legal liability of ₹17,02,015/-. There is no admission of DW-1 that the cheque in question was signed by accused No.2. Thus the impugned judgment suffers from no illegality.

4. The learned Trial Court considering the evidence on record framed four questions for consideration as under:

“(i) The extent of liability of the accused on the date of cheque in question.

(ii) Whether the signatory/accused was authorized person to enter into loan agreement with the complainant and issue the cheque on behalf of accused company.

(iii) Whether the defence of the accused of other particulars of the cheque in question, except his signatures, being filled by some one else is a valid defence in the eyes of law.

(iv) Whether the impugned cheque was dishonored.”

5. The finding of the learned Trial Court on the questions to hold that the accused has been able to rebut the presumption and had no legal liability to pay was that according to the buyback agreement the appellant company was required to sell the shares in the open market if the value of shares fetch ₹15/- per share however, the appellant company failed to sell the shares despite the price of shares in question exceeding the value of ₹15/- per share

in open market in terms of said buyback agreement. In this regard respondent No. 2 examined authorized representative of the Delhi Stock Exchange as DW-2 who deposed about the rate of share in question to be ₹15/- in the open market at the relevant period. Learned Trial Court further noted that even if interest @3% per annum is calculated on the amount of ₹11,37,500/- as demanded vide letter dated 15th October, 1997, the amount calculated as on 21st December, 1998 was ₹16,17,451/- and not ₹17,02,015/- as written in the alleged cheque.

6. The learned Trial Court also noted that to fasten the criminal liability under Section 138 of the NI Act the liability of the accused on the date of cheque alone is material and cannot be increased based on conjunctures and surmises. The learned Trial Court further noted that though signatures on the impugned cheque was admitted by the respondent No. 2 company however, it was the case of the respondent No. 2 that blank signed cheque from a person other than the employer was taken and subsequently misappropriated. Even though the learned Trial Court held that though except signatures rest of the matter and the cheque was not filed by the respondent No.2 company the same was immaterial and if the cheque was dishonored on the ground 'refer to drawer' it was covered under the minor Section of 138 NI Act however, in view of the fact that there was no liability of the cheque amount, that is, ₹17,02,015/- even calculated as per the petitioner's case the complaint was dismissed.

7. A perusal of the buyback agreement between the parties executed on 1st October, 1996 notes that the appellant was to purchase 91,000 shares of ₹10/- each for a sum of ₹10,03,000/- and the respondent No. 1 agreed to buy back the said 91,000 shares of ₹10/- each @ 12.50% each after a period of

12½ months, that is, 15th October, 1997. The appellant was also given an option to sell the said shares in open market if the price of the same goes beyond ₹15/- each before 15th October, 1997. The appellant was provided with 45,000 shares of the respondent No. 2 along with the duly signed transfer deeds as security against their buyback commitment and in case of failure the appellant was authorized to dispose of the said shares in the market.

8. The entire complaint is silent on the 45,000 shares provided by the respondent No. 2 as per the buyback agreement. The respondent No. 2 has also led the evidence about the market price of the shares purchased being above ₹15/- per share by examining DW-2.

9. Considering the evidence on record as discussed by the learned Trial Court it cannot be held that the finding of the learned Trial Court is perverse and contrary to the evidence led. The legal position with regard to the interference against the judgment of acquittal is well settled that if the view by the learned Trial Court is a plausible view then in an appeal against acquittal the Appellate Court will not interfere in the same unless the finding is perverse, based on no evidence or contrary to the evidence on record.

10. Appeal is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 05, 2018
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