

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-635-MA-2016 (O&M)
Date of Decision: November 16, 2019

M/s P.R. Textiles

.....Applicant

Versus

M/s Orion Fabrics Pvt. Ltd. and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vivek Salathia, Advocate, for the applicant.

Mr. Rajiv Kataria, Advocate, for respondent No.1.

Harnaresh Singh Gill, J.

The complainant (applicant herein) has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 23.01.2012 passed by the learned Judicial magistrate, Ist Class, Amritsar, whereby the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), was dismissed and the accused was acquitted.

It may be noticed that against the impugned judgment, the applicant had initially filed an appeal before the learned Sessions Court, Amritsar. However, vide order dated 12.1.2016 passed by the Additional Sessions Judge, Amritsar, the said appeal was dismissed as withdrawn being not maintainable. Thereafter, the applicant filed the present application seeking leave to appeal with delay of 1457 days, which was condoned vide order dated 9.4.2019 passed by this Court.

Complainant-M/s P.R. Textiles, a registered partnership firm, filed a complaint under Section 138 of the Act against the accused-Company, inter-alia, on the grounds that the accused had purchased goods from the complainant and towards the payment thereof, it had issued a cheque dated 12.4.2006 in favour of the complainant for an amount of Rs.1,03,400/-; that upon presentation of the said cheque for encashment, the same got dishonoured and returned by the Bank with the remarks "payment stopped by drawer" and that the complainant had served upon the accused a legal notice dated 25.4.2006, but despite the service of said notice, the accused failed to make the payment.

In the said complaint, respondent No.1 was summoned to face the trial and thereafter, notice of accusation was served upon it.

The complainant in support of its case had examined Kamal Malik, the attorney of Mr. Ashok Kumar, partner of the complainant firm as CW1; Surinder Mahajan as CW2 and Amit Mahajan as CW3.

Statement of the accused under Section 313 Cr.P.C. was recorded to which he pleaded not guilty and claimed trial. It was stated by the accused that the complainant had forged certain bills in order to fasten upon the accused-Company the false liability. It was further stated that as a matter of fact, the complainant had agreed to sell three shuttle less machines to the accused-company through a broker for a total amount of Rs.18,03,400/- and that the accused had paid an amount of

Rs.5 lacs through cheque and Rs.12 lacs through demand draft, which were duly credited to the account of the complainant. The accused company had received two shuttle less machines, the value of which came to Rs.12,16,800/- and these machines were received from one Pee Kay Synthetic firm. It was yet further stated that for getting the third machine, the accused-Company had issued a cheque (Ex.C2) in favour of the complainant-firm, but the complainant had never supplied third machine to the accused-Company which was why the payment was stopped; that the accused-Company had never agreed to purchase any cloth from the complainant-firm; that as far as the payment of Rs.1,03,400/- was concerned, the accused-Company had already paid an amount of Rs.17 lacs to the complainant-firm and the said amount was still standing in the account of the complainant-firm.

The learned trial Court has framed the following point for determination:-

“Whether the accused had issued the cheque in question in discharge of his legal debt/liability and the accused has failed to make the payment to the complainant within the period of 15 days from the receipt of notice and as such, the accused has committed offence under Section 138 of the Negotiable Instruments Act?

After considering the entire evidence on record, the learned trial Court found that the entire claim of the complainant was based on the bill Mark-B. As per the said

document, the complainant-firm had received Rs.5 lacs as an advance for the purchase of fabrics vide cheque No. 51411 dated 1.4.2006. This fact was duly admitted by the witnesses of the complainant. It was further found that the contention of the complainant firm that it had never supplied the machine to the accused-Company got falsified from the receipt of the machine from the sister concern of the complainant-firm. Still further, it was found that Ex. D7, which was the copy of the award passed by Delhi Hindustani Merchantile Association, had clearly supported the assertions of the accused-Company that there was a sale agreement between the complainant and the accused for three machines out of which only two machines had been supplied. On the basis of the aforesaid evidence, the learned trial Court concluded to the following effect:-

“11. Accordingly, the arena of discussion made above and within the parameters of cross-examination of all the witnesses of the complainant, it sums up into a unanimous conclusion that the accused never purchased any fabrics from the complainant concern. Originally there was the sale agreement between the parties wherein cheque bearing No. 051411 of Rs.5 lacs was given as an advance on 1.4.2006 but later on due to dispute arisen between the parties; complainant concern prepared the false bill in the name of accused and on that bill shown the cheque No. 05411 as

advance of Rs.5 lacs for the fabrics which was admittedly given for the purchase of machinery which is sufficient to prove on record that the cheque in question has been misused by the complainant and no such fabrics was ever delivered to the accused firm as alleged by the complainant. Accused has been successful in rebutting the presumption under Section 139 of the Negotiable Instruments Act. Consequently, no liability under Section 138 N.I. Act can be fastened upon the accused. The complaint is hereby dismissed and the accused is acquitted of notice served upon him....”

I have heard learned counsel for the applicant and have gone through the record of the case, but I do not find any merit in the present application.

Learned counsel appearing for the applicant contends that once the cheque was issued by the accused-Company and the payment thereof was stopped by it, there was no occasion for the trial Court to conclude that there was no legal liability on the part of the accused-Company in respect of which the cheque was issued. Still further, it is argued that merely because the amount of Rs.5 lacs was admitted to have been received vide Mark-B, is no ground to discard the issuance of the cheque in question, which was for a meager amount of Rs.1,03,400/-.

I do not find any merit in the said contentions of the learned counsel for the applicant. Admittedly, as per the evidence on record, there was sale transactions between the parties regarding the sale of three shuttle less machines out of which only two machines had been delivered by the complainant to the accused-Company. Learned counsel for the applicant could not dispute the document Ex. D7, which was the copy of the award passed by Delhi Hindustani Merchantile Association. The said document clinches the point that in total, three machines were to be delivered by the complainant-firm to the accused-Company. Still further, the complainant could not prove on record as to against which liability the cheque in question for an amount Rs.1,03,400/- was issued, whereas as per the documents on record, payment and receipt of Rs.5 lacs stood proved.

It could not be pointed out that the learned trial Court has misread or misinterpreted the evidence while passing the impugned judgment. Still further, I do not find any perversity or illegality in the impugned judgment, which may warrant interference by this Court in the present application.

In view of the above, the present application is dismissed. Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

November 16, 2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No