IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-126-2018 (O&M)
Date of decision : 19.11.2019

M/s Ramesh Poultry Farm and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Kundu, Advocate for the petitioners.

Mr. Anmol Malik, AAG, Haryana.

Mr. Munish Kumar Garg, Advocate for respondent No.2.

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ANIL KSHETARPAL, J. (ORAL)

Petitioner No.1-the Poultry firm and petitioner No.2-the Proprietor of the Poultry firm (petitioner No.1), are in the revision against the judgment passed by the learned Magistrate affirmed in appeal by the learned Court of Sessions.

On dishonour of the cheque No.040754 dated 06.12.2012 drawn on Bank of India amounting to ₹8,54,000/-, proceedings under Section 138 of the Negotiable Instruments Act, were initiated by M/s Perfect Poultries (respondent No.2).

FACTS:-

Convict-petitioners runs a poultry farm. Complainant and his brother are manufacturers and traders of the poultry feed. Complainant-respondent, which is a sole proprietorship, runs business in the name of M/s Perfect Poultries through its proprietor-Sanjay Jain-complainant. His brother Rajesh Jain used to run the identical business under the name of M/s Perfect Bio Nutrients. Complainant-respondent claims that cheque in question was issued in discharge of debt on account of supply of poultry feed to petitioner No.1-firm, on credit basis whereas it is the case of defence that, in fact, petitioner No.1-poultry firm was having dealing only with M/s Perfect Bio Nutrients owned by Rajesh Jain and had no dealing with respondent-complainant firm. Rajesh Jain had proposed and introduced the name of the petitioner firm in the bank while opening a current account and at that time, obtained signatures on certain blank cheques. It has come on record that cheques Nos.040751 and 040752 were encashed by Rajesh Jain in August and September, 2007 whereas petitioner-convict had encashed cheque No.040755 in 2009. Cheque in question bears serial number 040754 dated 06.12.2012. In other words, cheques having prior and subsequent serial numbers were encashed at least 3 to 5 years before the date mentioned on the cheque. It is admitted fact on the record that both the brothers namely Rajesh Jain and Sanjay Jain (complainant) are doing the business of manufacture and supply of poultry feed from same premises.

No evidence has been brought on record to prove that Sanjay Jain-complainant-respondent was having any business transactions with the convict firm-petitioners herein except alleged the sale of poultry feed through invoices in question. The poultry feed is tax free.

It is case of the respondent-complainant that the amount payable through the cheque in question is for the poultry feed supplied. In order to establish that fact, complainant has produced copies of various invoices dated 05.07.2012, 22.07.2012, 06.08.2012, 19.08.2012 and 28.08.2012. All these invoices are admittedly not signed by the petitioner or its employee in token of having received the material. These invoices also do not refer to any vehicle number through which the poultry feed was transported to the premises of the petitioner. When questioned in cross-examination, complainant/respondent stated that there is no practice of referring to the vehicle number through which the poultry feed is to be transported. However, the petitioner produced invoices issued by the M/s Perfect Bio Nutrients owned by the brother of the complainant/respondent herein as Ex.RW2/1, Ex.RW2/2, Ex.RW2/3, Ex.RW2/4, Ex.RW2/5. In these invoices, vehicle number through which poultry feed was transported from the premises of the supplier to the premises of the purchaser, have been mentioned alongwith telephone number of the person who received poultry feed on behalf of petitioner firm.

Complainant has further taken a stand that the accused-convict-petitioner herein had taken a delivery of the poultry feed from the factory/godown premises of the complainant. He admit that signatures of the petitioner or its employees were not obtained on the invoices in question, to prove receipt of the poultry feed. It is improbable that a firm, which is supplying material for the first time on credit basis to the accused, is neither produces any supply/order in writing nor gets signatures on the invoice to prove the delivery of material. Further, doubt on the correctness of the claim made by the complainant gets strengthened from the fact that bank account in question on which cheque was drawn, was closed on 05.10.2010 whereas the cheque in question is stated to have been issued on 06.12.2012. As noticed above, cheque Nos.040751 and 040752 were encashed by the brother of the complainant-respondent in 2007. Whereas cheque no.040755 was encashed by the petitioner firm in 2009. Now the cheque which bears serial number 040754 is alleged to have been issued on 06.12.2012 in favour of complainant firm.

Statement of complainant makes an interesting reading. He admits that he did not get signatures of the invoices to establish receipt of the poultry feed. He also admits that he has not mentioned any GR number of vehicle on the invoices. When further questioned, whether he can show or produce any record of production and sale, he answers that he does not keep any record. Thereafter, he took a stand that documents to prove sale of the material are in chamber of the counsel. He admits that he does not maintain any record of entry or exit of the vehicle from his premises. When further questioned, he feigned ignorance that various columns of the cheques and signatures on the cheques are filled/written with different pens. He, thereafter, tries to clarify that various columns of the cheque were already filled but petitioner No.2 had signed in his presence. He further admits that he alongwith his brother used to do business from the same premises while sitting jointly, at the relevant time.

No doubt, the jurisdiction of the Court while hearing a criminal revision petition is limited, however, if the Court comes to a conclusion that the judgments passed by the Courts below suffers from patent error and the Courts have failed to appreciate admitted facts on record, this Court is not debarred from re-appreciating the facts particularly when the facts are leading the Court to only one conclusion i.e. the judgments passed by the Courts are perverse. Hence, this Court proceed to re-appreciate the evidence.

Now the stage is set for examining the reasons given by the Court of Sessions dismissing the appeal.

The Court of Sessions has observed that since signatures on the cheque in question are not disputed, therefore, petitioners have failed to rebut the statutory presumption available under Section 139 of the Negotiable Instruments Act in favour of the holder of a cheque. It may be noted that the presumption under Section 139 of the Negotiable Instruments Act is required to be rebutted on the preponderance of probabilities. Whereas prosecution in order to bring home the guilt has to prove its case beyond shadow of reasonable doubt. In the considered view of this Court, on preponderance of probabilities, the petitioners have succeeded in proving that the initial presumption in favour of holder of cheque stands rebutted.

Second reason given by the Court that RW2-Rajesh Jain, brother of the complainant has been examined by the petitioners-convicts herein. The Court of Sessions felt that statement of RW2-Rajesh Jain does not advance the case of the petitioners once, Rajesh Jain after initial reluctance has admitted that he was the one who signed as a proposer when petitioners opened the account and had also encashed two cheques bearing serial numbers 40752 and 40753 in the year 2007.

Learned Court of Sessions has factually erred in returning a finding that the invoices relied upon by the complainant Ex.P6 to Ex.P10 are identical to the invoices produced by the petitioners-convicts herein i.e.

Ex.RW2/1 to Ex.RW2/5. The fundamental difference between the invoices produced between the petitioners which were issued by the brother of the complainant-respondent and the invoices produced by the complainant is that on each invoice, the vehicle number through which the poultry feed was transported has been specified. Two invoices also refer to the mobile number of the person who has received the material. Whereas, the invoices produced by the complainant-respondent neither refer to the vehicle number through which the material was transported nor has the signatures of the person who received the material. In the column of transporter, it has been mentioned as self but still the signature of the employee or the petitioners who had come to receive the material has not been obtained. Thus, the aforesaid difference has been overlooked by the Court of Sessions.

Learned Court of Sessions has also erred while rejecting the contention of learned counsel for the petitioners that invoices Ex.P6 to Ex.P10 have not been proved as certificate under Section 65-B of the Indian Evidence Act, 1872, has not been produced nor the Accountant who maintained the entries has been examined in the Court. Ex.P6 to Ex.P10 are copies of the computer generated invoices, therefore, it was incumbent upon the complainant to produce certificate as required under Section 65-B of the Indian Evidence Act, 1872, and to examine the Accountant. Poultry feed is a tax free item. Merely because in the income tax record, the complainant firm has shown that the amount is recoverable from the petitioners, would not prove that the amount is recoverable. The Income Tax Record is prepared by the complainant-respondent firm.

In view of the aforesaid discussion and doubts having been created in the case of the complainant, the Courts of Magistrate as well as Session ought to have examine the case in more depth before passing an order of conviction. The initial presumption as noticed stood rebutted. Reference in this regard can be made to three Judge Bench judgment of Hon'ble the Supreme Court in the case of ***Rangappa Vs. Sri Mohan, 2010 (1) SCC 441***.

In view thereof, the present petition is allowed.

19.11.2019 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**