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

\+ **CRL.L.P. 707/2019 & CRL.M.A. 42766/2019 & CRL.M.A. 42767/2019**

ECOLOGICAL PRODUCTS INDUSTRIES ..... Petitioner

Through: Mr Vishal Tewari, Advocate.

versus

SANJEEV KUMAR MALHAN & ANR. ..... Respondents

Through

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

% **16.12.2019**

1. The petitioner has filed the present petition, *inter alia,* praying that special leave be granted to appeal against a judgement dated 30.09.2019 passed by the learned Metropolitan Magistrate, acquitting the respondents of the offence under Section 138 of the Negotiable Instruments Act, 1881.

2. It is the petitioner's case that it had presented a cheque bearing No. 029908 dated 10.12.2013 drawn on ICICI Bank, BRS Nagar Branch, Ludhiana for a sum of ₹49,32,689/-. The petitioner alleges that the said cheque was received on 07.12.2013, which was subsequently deposited in its account. The said cheque was dishonoured on presentation with the remarks "account closed".

3. According to the petitioner, the said cheque was issued against goods supplied by the petitioner to the respondent. The petitioner had also filed its statement of accounts to indicate that the said amount was due from the respondent. In order to establish that the said cheques were received against an enforceable liability, the petitioner had produced two invoices – a bill bearing no. EPI/701 dated 06.07.2013 for a value ₹40,51,750/- and a bill bearing no. EPI/700 dated 06.07.2013 for an amount of ₹18,26,000/-. The petitioner had also produced delivery challans (GR No.79025) for a value of ₹22,64,400/-. In addition to the above, the petitioner had produced a computerised statement of accounts, indicating that amounts as claimed were due to the petitioner.

4. Respondent No.1 had disputed the aforesaid. He testified that one of the partners of the petitioner firm, namely Shri Sher Singh Jalandhara, was also a partner in respondent no. 2 firm (M/s Eco Inputs). He also produced a Partnership Deed (Ex.DW-1/1) to establish the same. He stated that the said partnership subsisted till 30.09.2013 and the same was dissolved by a Dissolution Deed dated 29.09.2013. The said firm had a bank account (A/c No. 064205000296) with ICICI Bank, which was opened on the signatures of both respondent no. 1 and Shri Sher Singh Jalandhara. The account opening form (Ex.DW-1/2) was also produced. The respondent deposed that the said account was closed after dissolution of the firm and the same was informed by him to Shri Sher Singh Jalandhara by an email dated 19.11.2013. He had, thereafter, also filed a suit for rendition of accounts. He stated that twelve or thirteen blank signed cheques were available with his erstwhile partner (Shri Sher Singh Jalandhara) for the purpose of

business and the same had been misused.

5. The respondent had also sought an injunction restraining Shri Sher Singh Jalandhara and the petitioner firm from presenting cheques bearing nos. 029905, 029907 and 029908. An interim order restraining the presentation of the said cheque was passed by the court of the Civil Judge, (JD), Ludhiana on 06.12.2013. In addition, the respondent had also produced a statement of accounts, which indicated that a sum of ₹4,00,000/- was owed by the petitioner to respondent. The said statement of account also included an amount of ₹22,64,400/-, which the petitioner states was the value of the goods supplied under the aforesaid delivery challans.

6. The Trial Court concluded that the respondents had effectively rebutted the presumption of any liability and the petitioner had failed to establish that the cheques in question were issued against an enforceable liability.

7. The respondent had set out a probable defence. This included the defence that he had not issued the cheques in question. The material facts as deposed by the respondent not been denied. It is not denied that Shri Sher Singh Jalandhara was a constituted partner of the complainant firm. He was also a partner of respondent no.2 firm (M/s Eco Inputs).

8. The petitioner's case that the said cheques were delivered on 07.12.2013 is, *ex facie*, difficult to accept. This is so, because the respondent had prior to the said date, on 06.12.2013, secured an injunction from the Civil Judge, Ludhiana restraining the presentation of the said cheques. The bank account on which the cheques were drawn was also

closed a few days after 30.09.2013.

9. In view of the above, the view expressed by the Trial Court is a plausible one. This Court finds no compelling reason to interfere with the impugned judgment dated 30.09.2019. Accordingly, the present petition seeking leave to appeal against the impugned judgment is rejected.

10. The pending applications are disposed of.

**VIBHU BAKHRU, J**

**DECEMBER 16, 2019**
**MK**