IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 124 OF 2019

R.J.Plastics ..Applicant

v/s.

M/s. Amplas Polymers Pvt. Ltd.
& Ors. ..Respondent/s

Mr. Sagar Kasar for the Applicant.
Mr. P.H.Gaikwad, APP for the Respondent No.5.

CORAM : ANUJA PRABHUDESSAI, J.
DATED : 6th OCTOBER 2021.

P.C.

1. This is an Application under Section 378(4)of Cr.P.C. seeking leave to appeal against the judgment dated 30.01.2019 in S.C.C.No.73 of 2006. By the impugned judgment the learned Magistrate has dismissed the complaint and acquitted the Respondents of offence under Section 138 r/w. 141 of the Negotiable Instruments Act.

2. The Applicant, hereinafter referred to as the Complainant, is a proprietary concern engaged in business of trading, selling and supplying of plastics granules. The Respondent No.1-Company is engaged in business of manufacturing plastic products. The

Complainant had supplied plastic granules to Respondent No.1 Company, of which Respondent Nos.2 to 4 are the Directors. It is the case of the Complainant that the Respondent No.4, as a Director of Respondent No.1 Company had issued two cheques bearing cheque no.434719 dated 12.07.2006 for Rs.10,90,800/- and cheque no. 434720 dt.15.07.2006 for Rs.5,55,400/- towards full payment of the goods supplied. The said cheques were dishonoured with an endorsement 'not signed as per signature mandate' and 'account closed'. By notice dated 21.08.2006 the Complainant called upon the Respondents to pay the cheque amount of Rs.16,36,200/-. It is alleged that the Respondents did not make the payment despite receipt of notice. Hence a complaint came to be filed under Section 138 r/w. 141 of the Negotiable Instruments Act.

3. The Complainant examined Rajnibhai Bagadia as CW1 and his brother Dharmendra Bagadia as CW2. In defence the Respondents examined DW1 Gopal Shah as their witness. The trial Court, upon examining the evidence on record held that the subject cheques were issued by the Respondent No.4. The Respondent Nos.2 and 3 are not the signatories to the said cheques. The trial Court also held that there are no averments in the complaint that Respondent Nos.2 and 3 were responsible for the conduct of the business of the Company at the time the offence was allegedly committed. Placing reliance upon the decision of the Apex Court in A.K.Singhania vs. Gujarat State Fertilizer Co. Ltd & Anr. AIR 2014 SC 71 and Gunmala Sales Pvt. Ltd. vs. Anu Mehta & Ors (AIR 2015 SC 1072, the trial Court held that in the absence of essential averments in the complaint, Respondent Nos.2 and 3 cannot be prosecuted for offence under Section 138 r/w. 141 of the N.I.Act.

4. The trial Court observed that the subject cheques were allegedly issued towards the price of the goods supplied by the Complainant. The trial Court observed that CW1 Rajnibhai has admitted in his cross examination that the Respondent No.1 Company owed only an amount of Rs.12,80,000/- and not an amount of Rs.16,36,200/-. The learned Judge has also taken note of the fact that though the invoices at Exhibit 101 and 102 show that the Complainant had sold plastic granules worth Rs.16,36,200/- the contents of the ledger (Exh.94) reveals that as on 1.4.2006 Respondent No.1 owed to the Complainant only an

amount of Rs.12,80,231/-. The learned Judge therefore held that the subject cheques which are for Rs.16,36,200/- were not issued towards discharge of legally enforceable debt. The learned Judge therefore acquitted the Respondents of offences under Section 138 r/w. 141 of N.I.Act. Hence the Complainant has filed the present application under Section 378 (4) of Cr.P.C. for grant of leave to appeal.

5. Heard Mr. Kasar, learned Counsel for the Applicant. Perused the records.

6. The complaint under Section 138 of the N.I. Act was filed for dishonour of subject cheques issued in favour of the Complainant towards price of goods supplied to Respondent No.1 company. The said cheques were issued by the Respondent No.4. The Respondent Nos.2 and 3 were not signatories to the said cheques. The averments in the complaint indicate that the Respondent Nos.2 and 3 were the Directors of Respondent No.1 Company. However, there are no averments in the complaint that at the time the offence was committed, these Respondents were in-charge of and responsible for the conduct of the business of the Company. In the absence of such essential averments, as stipulated in Section

141 of the N.I.Act, Respondent Nos.2 and 3 cannot be held guilty of the offence under Section 138 of the N.I.Act.

7. The averments in the complaint vis-a-vis the evidence of CW1 reveals that the subject cheques for Rs. 16,36,200/- were issued by the Respondent No.4 towards the price of the goods supplied. The said cheques were dishonoured and despite demand for the payment of the said amount made by notice dated 21.8.2006, the Respondent failed to pay the said amount.

8. It is pertinent to note that CW1 Rajnibhai Bagadia, has stated in his cross examination that the Respondent No.1 had purchased the goods from the Company in the month of March 2004. He has admitted that the Respondent No.1 used to regularly pay the purchase price on delivery of goods. CW1 was unable to state the price of the goods supplied to the Respondent No.1. He has admitted that the Respondent No.1 owed to the Complainant an amount of Rs.12,80,000/-. He has further admitted that the Respondent No.1 did not owe to the Complainant an amount of Rs.16,36,200/-. The evidence of this witness thus indicates that the actual liability of Respondent No.1 Company was to the tune of Rs.12,80,000/- and not Rs.16,36,200/- being the cheque amount. This admission sufficiently rebuts the presumption under Section 139 of the N.I.Act.

9. It is to be noted that CW2 Dharmendra Bagadia, the brother of CW1 has deposed that the Respondent No.1 Company had purchased plastic granules from the Complainant till 1.07.2004. He claims that the outstanding dues were to the tune of Rs.28,18,231/-. He claims that the general practice is to charge 36% interest in case the payment towards plastic granules is received after 30 days from the date of delivery. He has deposed that several cheques issued by the Respondent No.1 company were dis-honoured. Hence, a joint meeting was held in January 2006 to settle the accounts. He has deposed that as in January 2006 the total amount due was Rs.44,35,555/-, which included interest of Rs.15,55,325/-. He has deposed that after much negotiations the interest rate was reduced and it was agreed that the Respondent No.1 would pay the amount of Rs.28,80,231/- in addition, interest of Rs.3,55,969/-. The total amount thus payable by the Respondent No.1 was Rs.32,36,200/-. He has deposed that the Respondent paid an amount of Rs.16,00,000/- and was liable to pay the balance amount of Rs.16,36,200/-. The subject cheques were issued towards payment of the said balance amount.

10. It is pertinent to note that the averments in the complaint as well as the evidence of CW1 does not indicate that the total outstanding dues were to the tune of Rs.32,36,200/-. There is no reference to the settlement talks and/or payment of Rs.16,00,000/-. The averments in the complaint and the evidence of CW1 also does not indicate that the cheques for Rs.16,36,200/- were issued towards payment of the balance amount, but mentions that the cheques for Rs.16,36,200/- were issued towards the price of the goods purchased by Respondent No.1.

11. It is also pertinent to note that CW2 has admitted in his cross examination that as per the ledger at Exhibit 94 dated 1.4.2006, the outstanding dues were 12,80,231/- . He has admitted that the Respondent No.1 had no business transaction with the Complainant after the said entry in the ledger at Exh. 94. The material on record thus clearly indicates that as on 1.4.2006, the outstanding dues were Rs.12,80,231/- and this falsifies the claim of CW2 that the amount due on January 2006 was Rs.44,35,555/-.

As rightly held by the learned Magistrate, CW2 had introduced a new case of settlement only to wipe out the admission made by CW1.

12. The actual liability of the Respondent No.1 according to the complainant was Rs.12,80,000/-, which was less than the amount mentioned in the cheque. Despite which the Complainant presented the cheque for payment of the cheque amount of Rs.16,36,200/-. Furthermore, upon dishonour of the cheque, the Complainant issued a notice of demand making an omnibus demand for the entire cheque amount without indicating that the actual amount due was only Rs.12,80,200/-. Since the liability of Respondent No.1 was only Rs.12,80,200/-, the Complainant could have demanded only an amount of Rs.12,80,200/-. Thus the demand notice calling upn the Respondent to pay the amount more than the amount due, cannot be said to be a legal and valid notice as envisaged in Section 138(b) of the N.I. Act.

13. In view of the discussion supra, it is evident that the amount payable to the Complainant was much less than the actual amount mentioned in the subject cheques or demanded by the statutory notice. The Respondent No.1 was therefore not legally liable to pay the said amount. Under the circumstances, the view taken by the learned Judge being possible and plausible view, the same cannot be interfered with. The application is therefore dismissed.

PRASANNA P SALGAONKAR
Digitally signed by PRASANNA P SALGAONKAR Date: 2021.10.12 17:25:18 +0530

(ANUJA PRABHUDESSAI, J.)