

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A- 706 of 2020 (O&M)

Date of Decision: 4th May, 2022

M/s American Agri Science and another

Appellants

Versus

M/s Aashirvad Fertilizers and Presticides and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Arun Luthra, Advocate for the appellants.

AVNEESH JHINGAN, J (Oral):

This is an application under Section 378(4) Cr.P.C. for grant of leave to appeal against acquittal of respondent No. 2 in Criminal Complaint No. RBT/487 of 2018. The application is accompanied by an application for condoning the delay of 49 days.

The brief facts are that the complainant-Sanjay was running a sole proprietorship concern in the name and style of M/s American Agri. Science and was engaged in the sale and purchase of pesticides. Cheque No. 000015 dated 1.3.2017 issued by the respondents was presented which was returned with the comments "payment stopped by drawer". After issuing notice, the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was filed.

The case set up by the complainant was that the respondents had purchased pesticides and were to pay Rs.4,03,102/-, excluding the interest accruing @ 1.5% per annum w.e.f. 1.4.2016.

Respondent No. 2 took a defence that he was having business

dealing with the complainant and was purchasing pesticides on credit basis. He agreed to repay the amount along with interest @ 1.5% per annum. Two security cheques were issued but the accounts were settled on payment of Rs.3,95,000/-. To substantiate the defence, respondent No. 2 relied upon the deposition of DW1-Baljit Singh who categorically deposed that in his presence, the amount was paid to Amarjeet son of Balwan, Area Manager of the complainant concern. The receipt issued by the Area Manager was exhibited as R2. The signatures were identified by DW1 and complainant had not disputed the signatures. The receipt mentioned that the amount has been received as full and final payment. Further, two security cheques No. 000015 and 000016 were in possession of the complainant which would be returned. The trial court acquitted the respondent considering that presumption against the complainant was rebutted and the petitioner failed to discharge the onus that the cheque presented was issued in discharge of debt or other liability.

Learned counsel for the petitioners submits that there is variation between the statement made under Section 313 Cr.P.C. and the cheque number mentioned on the receipt. The amount for which cheque was issued was different than the amount which was paid for settlement of the account.

There is no quarrel on the proposition that presumptions in favour of the cheque holder under Sections 118 and 139 of the Act are rebuttable. Respondent No. 2 in the present case had successfully rebutted the presumptions by the deposition of DW1 and exhibiting R2. It is not even disputed today that Ex.R2 is the receipt issued by Area Manager of

petitioner No. 1 and it contains two facts. Firstly that the payment has been received as full and final settlement of the account and secondly that the complainant was in possession of two security cheques i.e. No. 000015 and 00016.

The Supreme Court in Vijay v. Laxman and another, 2013

(2) JT 562 held as under:

“We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 138 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is trite that the courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court”.

After successful rebuttal of the presumptions by respondent, the complainant failed to discharge the onus cast upon him that the cheque was issued for discharge of debt or other liability.

No case is made out for grant of leave to appeal as no legal or factual error, much less perversity, has been pointed out in the impugned order. The conclusion arrived at by the trial court is plausible reason.

The application is dismissed.

Since the application for grant of leave to appeal is dismissed on merits, the application for condonation of delay is disposed of accordingly.

[AVNEESH JHINGAN]

JUDGE

4th May, 2022
mk

- | | | |
|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |