**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-A-1110-MA-2017 (O&M)
Date of decision : 20.09.2022**

The Gurdaspur Cooperative Sugar Mills Ltd. ...... Applicant

versus

M/s. Kedar Nath Vinod Kumar ...... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vikas Singh, Advocate
for the applicant.

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PANKAJ JAIN, J. (Oral)

By way of present application under Section 378(4) Cr.P.C., the applicant seeks leave to file appeal against the judgment dated 25.07.2016 passed by JMIC, Gurdaspur. The complaint filed by the applicant against the respondent under Section 138 of the Negotiable Instructions Act (for short 'N.I. Act') stands dismissed vide impugned order dated 25.07.2016 passed by JMIC, Gurdaspur.

2. The trial Court while dismissing the complaint held that the accused-respondent has raised probable defence and thus he was entitled for acquittal.

3. In the present case, the dispute relates to alleged order having been placed by the respondent for bags of sugar. It has come on record that there was no written order with the complainant and rather no such order was executed having been cancelled later on.

4. Counsel for the applicant does not dispute the fact that the Sugar was not delivered. However, he submits that owing to the fact that there was fluctuation in the price of commodity, the mill i.e. the complainant suffered losses and in order to discharge liability qua those

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losses suffered by the complainant, the cheques in hand were issued.

5. Trial Court while deciding the issue held as under:-

> "xx xx xx
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> 9. The accused in order to rebut the presumption under Section 138 read with Section 118 of NI Act has to set up at least probable defence. The defence cannot be frivolous or moonshine. The complainant in his statement under Section 313 Cr.P.C has taken the stand that the he never placed an order on 03.09.2009 for the purchase of 700 bags of sugar, the cheque was a blank cheque and same was given for a security purpose and which was later on misused by the complainant. The accused person has cross examined the complainant who in his cross-examination has deposed that on 03.09.2009 total 700 bags of sugar was sold to M/s. Kedar Nath Vinod Kumar. He further deposed that no written order of purchase of said sugar bag was made by the accused. He further deposed that it is correct that actual delivery of 1500 bags of sugar was not made in favour of the accused. He further deposed that it is correct that our mill receives security cheque while dealing first time/appointing sugar agent. He further deposed that 1500 bags of sugar which was not lifted by accused were later on sold to differed buyers but he do not remember their name. He further deposed that a mill has not settle any terms and conditions regarding the fixing the liability on failure to lift the sugar bags. He further deposed that he has not placed on record price list of sugar on the date of said transaction and on the day when 1500 bags were sold to other buyers on failure of lifting the same by accused. He further deposed that it is correct that he has not placed on record any document regarding lifting of remaining

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200 bags by accused. He further deposed that it is correct that there mill has not issued any cancellation letter to cancel the license of accused being sugar agent of the mill on failure to lift the 1500 sugar bags. He further deposed that he has not placed on record any ledger pertaining to dispute. He further deposed that it is correct that he has not placed on record any calculation receipt regarding amount in dispute.

10. The complainant mill has not placed on record any document from which it could be inferred that the accused person has placed an order with the complainant firm with regard to the purchase of the sugar and also not placed on record any documents to establish that the order was cancelled by the accused person. The complainant firm has taken the stand that the cheque was issued by the accused person in order to discharge his liability with regard to the loss suffered by the complainant due to the cancellation of the order by the accused The complainant firm has not placed on record any document from which it could be inferred that the complainant firm has suffered the loss due to cancellation of the order by the accused. Unless and until this fact has been established by the complainant firm the accused cannot be held guilty with regard to the dishonor of the cheque. The complainant firm has not placed on record any account books on record from which it could be inferred that the complainant mill has suffered the loss due to the act of the accused. The complainant being the mill must be maintaining the account books and there was no hitch for the complainant mill to place on record the account books."

6. Trite it is that the statutory presumption as contemplated under Sections 118 and 139 of the N.I. Act, like any other presumption in

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law are rebuttal. Accused is well within its right to rebut the same from the evidence adduced by the complainant.

7. It is also not disputed that the cheque amount did not relate to supply of any commodity. So far as the plea w.r.t. the loss having been suffered by the mill is concerned, the said plea was required to be proved in accordance with Section 73/74 of the Indian Contract Act by the complainant as there cannot be any presumption w.r.t. the same.

8. Consequently, no fault can be found with the finding recorded by the trial Court.

9. Hence, the present application stands dismissed.

10. Since the main case has been decided, pending miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

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Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No

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