

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

237

CRM-A-1592-MA-2017 (O&M)

Reserved on : 04.07.2022

Pronounced on: 11.07.2022

ALEX ENTERPRISES

...Petitioner

Versus

S.R. INNOVATION AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Kuldeep V. Singh, Advocate
for the applicant.

HARNARESH SINGH GILL, J. (ORAL)

CRM-23680-2017

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 15 days in filing the present application seeking leave to appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 15 days in filing the application seeking leave to appeal is hereby condoned.

CRM-A-1592-MA-2017

Challenge in this petition is to the order dated 20.04.2017 passed

by the learned Judicial Magistrate, 1st Class, Panchkula, vide which the complaint filed under Section 138 of the Negotiable Instruments Act, 1881, by the applicant-complainant was dismissed and the respondent-accused were acquitted of notice of accusation.

Learned counsel for the applicant-complainant submits that the applicant-complainant is a partnership firm, which has authorized Mr. Rajesh Marwaha to file the present application, being its representative; that the respondents used to purchase the material from the applicant-complainant/firm and accordingly, bills qua the same were raised and that in order to discharge the legal liability, the respondents had issued a cheque bearing No.190807 dated 04.04.2014 for Rs.5,00,000/- drawn on HDFC Bank, Patparganj, New Delhi. He further submits that on presenting the aforesaid cheque on 05.04.2014, the same got dishonoured with remarks 'payment stopped'; that the applicant-complainant issued legal notice dated 01.05.2014 through registered post, calling upon the respondents to make the necessary payment and that when the payment was not made by the respondents, the complaint in question was filed.

During the course of evidence, the applicant-complainant stepped into the witness-box and proved documents i.e. Ex. C-1 to Ex. C-12 and Mark-A to Mark-L, before closing the evidence on 14.03.2016 and thereafter, the respondents were summoned to face the trial. On appearance of the respondents, their statements under Section 313 Cr.P.C. were recorded, wherein they had pleaded not guilty and claimed trial. Though no witness in

defence was examined, yet the respondents pleaded that Mr. Rajesh Marwaha, was not authorized to file the complaint and that the cheque in question was given as a security cheque, which had been misused by the applicant-complainant, on the basis of the false bills/documents. They further asserted that there was no legally enforceable debt due towards them.

The learned Magistrate after taking into consideration the evidence on record drawn the conclusion that though Mr. Rajesh Marwaha, through whom the complaint was filed, was neither the partner nor the proprietor of the applicant-complainant/firm, yet the fact remains that he was duly authorized to file the same vide letter dated 09.06.2014 and thus, there was no deficiency in filing the complaint by Mr. Rajesh Marwaha.

The complaint was dismissed on the ground that the debt due towards the applicant-complainant was Rs.1,00,000/-, whereas the cheque in question was Rs.5,00,000/-. The applicant-complainant failed to prove as to how cheque amounting to Rs.5,00,000/- was given by the respondents, when the debt due towards the respondents was Rs.1,00,000/-.

I have heard the learned counsel for the applicant-complainant and also gone through the material on record.

It has been rightly observed by the learned Magistrate that since, the complaint has been filed by the authorized representative, there was no deficiency in filing the same. Admittedly, the respondents have issued the cheque in question but the respondents-accused could be made liable only for the debt which is legally due towards them.

As per Section 138 of the NI Act, 1881, the issuance of the cheque by the accused is legally enforceable debt and it is the duty of the drawer of the cheque to discharge the existing liability.

As per the record, the legally enforceable debt/liability of the respondents-accused was Rs.1,00,000/- inclusive of the interest amount. The applicant-complainant has not placed on record any document to show that the legally enforceable debt of the respondents-accused was Rs.5,00,000/-. Thus, keeping in the view the above said facts, there is no infirmity or illegality in the order passed by the learned Magistrate.

In view of the above, no ground is made out to interfere with the well-reasoned judgment passed by the Court below.

Dismissed.

(HARNARESH SINGH GILL)
JUDGE

11.07.2022

Aman Jain

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No