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

219 **CRM-A-2579-MA-2017**
Date of Decision: 29.10.2022
****

Ashok Jain ... Applicant

VS.

M/s Giilvert Ispat & Ors. ... Respondents
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
****

Present: Mr. Kishan Garg, Advocate for the applicant
****

<u>Sandeep Moudgil, J. (Oral)</u>

This application has been filed by the applicant under Section 378(4) CrPC for permission to file the accompanying appeal against the judgment dated 03.10.2017 passed by learned JMIC, Ludhiana whereby the respondent has been acquitted in a complaint under Section 138 of the Negotiable Instruments Act (in short the NI Act).

Brief facts of the case are that the applicant is carrying on the business of trading in metal waste and scrap under the name and style of M/s Raghav Industries as sole proprietor. That the respondents No.2 and 3 represented themselves to be the partners of the respondents No.1 firm and approached the applicant for the purpose of metal waste and scrap on credit. It was agreed between the respondents and the applicant that the applicant shall supply the goods on credit of 7 days and in case, the payment is not made within credit period, the applicant shall be entitled to charge interest @8% per annum on the outstanding amount from the date of the bill till the date of payment. In pursuance of the said understanding, the applicant started supplying various types of metal waste and scrap to the respondents as per their requirement. The invoices vide which the goods were supplied to the respondents have been duly entered in the books of accounts kept by the applicant in the ordinary course of business. The respondents had been making the part payment of the amounts due against the goods supplied and said amount payments have been duly credited in the account of the respondents in the books of the accounts maintained by the applicant in the regular course of business. That in the current financial year commencing from 01.04.2012, on settlement of accounts on 06.10.2012, a sum of 48,23,978.95p was due from the respondents No.1 to 3 on account of the balance price of the goods supplied to them by the applicant during the current financial year. That in order to partially discharge their legal liability towards the applicant respondents No.2 had issued nine cheques bearing No.238365 dated 09.10.2012 for 4 lacs and Nos.958542, 958547, 089945 to 089950, all dated 10.10.2012 for 5,50,000/- each, with the assurance that the said cheques shall be encashed but cheque No.238365 dated 09.10.2012 for Rs.4 lacs was dishonoured, vide memo dated 11.10.2012 with the remarks "Funds Insufficient" and other eight cheques bearing Nos.958542, 958547, 089945 to 089950, all dated 10.10.2012 for 5,50,000/- each were dishonoured and returned unpaid, vide memo dated 11.10.2012 with the remarks "Account Blocked". Thereafter, the applicant served a legal notice dated 05.11.2012 posted upon the respondents calling the respondents to make the payment of above said cheque amount, but the respondents in spite of receipt of the legal notice did not make the payment of cheque amount to the applicant. A complaint under section 138 of the NI Act was filed but the same has been dismissed vide judgment dated 03.10.2017 passed by the trial court on the ground that there is nothing on record to prove that the cheques in question were issued by the respondents in favour of the applicant in discharge of their legally enforceable debt.

Learned counsel for the applicant vehemently contended that Section 139 of Negotiable Instruments Act raises a presumption of legal liability of the issuer of the cheque until and unless rebutted by him. It has further been averred by the Ld. Counsel for the applicant that the respondents issued the cheques in question in favour of the applicant in discharge of their legally enforceable debt for the purchase of various types of metal waste and scrap. Neither they have paid part payment to the applicant nor they have honoured the cheques in question issued by them in discharge of their legally enforceable debt. In this regard a notice was also issued to the respondents but no reply was filed by the respondents. It has also been averred by the Ld. Counsel for the applicant that the signatures on the cheques in question have duly been admitted by the respondents and where the signatures on the cheque in question has not specifically been denied by the respondents it can be presumed that the cheque was issued for some consideration. It has been averred by the Ld. Counsel for the applicant that Section 139 of Negotiable Instruments Act raises a presumption of legal liability of the issuer of the cheque until and unless rebutted by him.

Having heard learned counsel for the applicant and gone through the record, this court does not find any fault with the judgment passed by the trial court.

Learned trial court rightly observed that the account maintained by the respondent-firm with the Punjab National Bank is a current account, not a saving account and a current account is more like an overdraft facility or cash credit limit which is a loan taken by the account holder for a specific purpose. As per Ex.DW.1/4, DW.1 i.e. the official from the Punjab National Bank has stated that the account of the respondent-firm was overdraft which is above the sufficient limit of the bank. It has also been stated by DW1 that even if the respondents had deposited any amount in the current account that would have automatically been transferred to the CC Limited account rather than honouring the cheques. Hence, it was beyond the control of the respondents to honour the cheques in question which are apparently dishonoured for the reason "Account Blocked", not due to the fault of the respondent-firm.

Learned trial court further rightly observed that the bills Ex.C.1 to Ex.C.13 allegedly issued in the name of the respondent-firm do not bear any signatures or receiving from any of its official or partner. The said bills were allegedly reflected in the sale register Ex.CX/CX.1 by the applicant which are loose sheets and merely photocopy of computer print out.

Regarding exhibition on the mode of proof, learned trial court rightly placed reliance on **Narvada Devi Gupta Vs. Barinder Kumar Jaswal, 2003 (4) RCR (Civil) 683** to say that mere exhibition of the documents does not prove the authenticity of said documents, they are required to be proved on record as per the provisions of Indian Evidence Act. Whereas in the present case, Ex.CX and Ex.CX.1 to Ex.CX.4 and Ex.C.14 have not been proved on record as per section 65-B of Indian Evidence Act as the said documents are mere computer printouts as neither any such output machine was produced in the court at the time of their exhibition nor it bears any certificate by the issuer of the said documents proving their authenticity as per section 65-B of Indian Evidence Act.

In view of the above, this Court does not find any ground to grant leave to appeal and the application is accordingly dismissed.

29.10.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*