

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-A-2491-2019

Date of Decision: 24.08.2022

Pawan Kumar Goyal

... Applicant

VS.

M/s Aggarwal Engineers & Contractors P.Ltd. & Anr. ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhishek Khullar, Advocate for
Mr. JS Jaidka, Advocate for the applicant

Sandeep Moudgil, J. (Oral)

This application for leave to appeal has been filed by applicant-complainant against acquittal of the respondent vide judgment and order dated 30.08.2019 passed by the learned JMIC, Chandigarh (for short, 'the trial court') whereby the complaint case No.530 of 2018 under Section 138 of the Negotiable Instruments Act (in short, the NI Act) has been dismissed.

Learned counsel for the applicant submits that the applicant-complainant is running a business of providing scaffolding and shuttering material on rent/lease for construction purposes and in that regard, an agreement was entered into with the respondent on 29.11.2015. Materials were supplied, however, respondent was irregular in making payments which constrained the applicant to invoke clause 7 of the agreement entered into between the applicant and the respondent. Resultantly, the security cheque issued by the respondent was presented by the applicant for realization which was dishonoured with a remark "payment stopped by drawer". Consequently, a complaint was filed which was dismissed vide impugned judgment.

Learned counsel for the applicant contends that the signatures on the cheques were not denied and as such there is a presumption that the

further submits that the trial court has failed to take into account the fact that respondent has admitted his liability. The trial court has erred in holding that the cheque has been misused by the applicant by filling the particulars by himself. It is argued that the exact defaulted amount could only be known after determining the amount received and how much amount was defaulted by the respondent. It is submitted that the ledger has been duly proved by the applicant and that no doubt could have been cast upon the delivery of material as the same has been admitted by the respondent.

I have heard learned counsel for the applicant and gone through the record.

The respondent in his statement under Section 313 CrPC denied the incriminating materials put by the applicant. However, no defence evidence was led by the respondent.

The trial court rightly held that the cheque has been used without the consent and permission of the respondent despite a letter of request Ex.C3 from the respondent requesting the applicant not to use the undated blank security cheque and assured the applicant for early clearance of the dues. The particulars in the cheque have been admittedly filled in by the applicant. It is well settled that the filling of contents of a cheque by the complainant amounts to alterations of cheque which is not permissible in law. In the present case, since the cheque was issued as a security, therefore, no liability under Section 138 of the NI Act can be fastened upon the respondent-accused.

Secondly, no witness has been examined by the applicant to verify the authenticity of the ledger statement. The entries in the books by themselves are not sufficient enough to charge any person with liability and

such entries need to be proved by leading cogent and convincing evidence and how the figure of alleged debt was arrived at. The complainant/applicant in his evidence has failed to produce any document regarding placing orders of purchase of material by the accused/respondent.

The trial court has rightly come to the conclusion that the applicant, being a business entity in Chandigarh, has not been able to prove the receipt of delivery of material to the respondent or any CST receipt/C-Form which is required for supply of material within or outside the territory of Chandigarh. Moreover, the ingredients to attract offence under Section 138 of the NI Act are not made out since the applicant-complainant failed to lead any cogent and convincing evidence to prove that there existed a legally enforceable debt against the respondent-accused.

In view of the above discussion, I do not find any illegality in the judgment and order passed by the learned trial court.

Accordingly, the application for leave to appeal is hereby dismissed.

24.08.2022

V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No