

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.212

CRM-269-MA-2007 in/and
CRA-S-1653-SB-2007 (O&M)
Reserved on:05.12.2022
Pronounced on:17.01.2023

M/s Colgate Pamolive (India) Limited

...Appellant

Versus

Raji Kapila and another

...Respondents

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms.Jasleen Chahal, Advocate for
Mr. D.S. Sobti, Advocate,
for the appellant.

Mr.Balram Singh, Advocate/Amicus Curiae,
for the respondent(s).

N.S. SHEKHAWAT, J.

The complainant-appellant has preferred the present appeal before this Court against the judgment dated 10.02.2007 passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the respondent/accused was ordered to be acquitted by the learned trial Court holding that the accused-respondent had specifically proved that when the cheques in question were issued by any person, there was no liability of the accused and even it was not proved on the file that the cheques were issued by the accused-respondent.

The facts, which are necessary for disposal of the present appeal, are that the complainant-appellant filed a complaint in the present case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') against Raji Kapila- respondent No.1 (accused) by alleging that she was the sole proprietor of the firm M/s Ramanand Mangal

Dass and the said firm was the distributor of the complainant firm. It was averred in the complaint that the accused-respondents used to purchase goods against the bills from the company and were making the payments time to time. As such the entire business of the firm M/s Ramanand Mangal Dass-respondent No.2 was actively looked after by accused-respondent No.1 and she was responsible for all the acts done by her in respect of the firm, being the sole proprietor of the said firm. The accused-respondents were under a legal liability to pay an amount of Rs.11,70,904.75 on account of the goods purchased by the accused from the complainant firm and in discharge of their legal liability to pay the aforementioned amount of the legally enforceable debt, the accused issued the following cheques to the appellant/complainant and all these cheques were drawn in Punjab and Sind Bank, Sahnewal, where the respondents were maintaining their bank accounts:-

Sr. No.	Cheque No.	Date	Amount
1.	506008	17.10.96	Rs.1,22,794/-
2.	506010	23.10.96	Rs. 88,952.72
3.	506011	25.10.96	Rs.1,99,683.80
4.	506013	01.11.96	Rs.1,10,017.88
5.	506014	06.11.96	Rs.1,22,753.42
6.	506015	22.11.96	Rs.1,46,793.04
7.	753848	26.11.96	Rs.1,58,169.68
8.	753849	25.11.96	Rs.1,30,003.62
9.	753850	25.10.96	Rs.98,732.90

It was further averred that the cheques were issued by the respondents in discharge of their legal liability and as such the appellant company was the holder of the cheques in due course of law. It was also pleaded that the appellant company in order to get the payments of the said cheques, presented all the cheques in its Bank i.e. Bank of America,

Nariman Point, Bombay, where the complainant company was maintaining its bank account and when the cheques were sent for clearing to the bank of the respondents, the cheques were dishonoured. Even on assurance of the respondents, the cheques were again presented and were dishonoured with the memos having the remarks “funds insufficient”. The information regarding the dishonouring of the cheques was given to the appellant by the Bank of America vide cheque return advice dated 21.04.1997 and as such the appellant company came to know about the dishonouring of the cheque on 21.04.1997. A legal notice vide registered cover dated 22.04.1997 was served by the appellant company, as per law and in spite of service of the said notice, the respondents failed to make the payment of amount of cheque to the appellant within the statutory period of 15 days and as such the respondents/accused had committed an offence punishable under Section 138 of the Act. With these broad averments, the complaint was filed by the appellant-complainant before the Court of learned Judicial Magistrate 1st Class, Ludhiana.

After leading the preliminary evidence by the appellant, the accused was summoned vide summoning order dated 28.10.1997 to face the prosecution for the offence punishable under Section 138 of the Act. The accused-respondent appeared and was admitted to bail and notice of accusation under Section 138 of the Act was served upon the respondent(s), to which she pleaded not guilty and claimed trial.

In order to prove the case against the respondents, appellant examined PW-1 Raj Guru Singh, who was authorised to depose on behalf of the appellant- company. He supported the contents of the complaint on all

material particulars. In cross-examination, PW-1 admitted that the cheques were issued by the accused, again said that blank cheques were given to the complainant party by the accused, which were used at the time of supply of the goods against each specific bill. He had not brought the account books before the Court. A specific request was made by the accused that the witness should be directed to bring the account books, whereas the said request was strongly opposed by the appellant-complainant. However, the request of the counsel for the accused was allowed and in spite of that, the account books were not produced by the appellant-complainant. The said witness further admitted that he could not tell the exact date of dispatch of goods and on asking, he stated that the date of the dispatch of the goods was 26.11.1998. He further stated that goods must have been received by the accused in the month of December 1998. He further stated that the total amount outstanding against the respondent/accused was Rs.20,66,683.90. However, they had filed a complaint against bouncing of 09 cheques for a total amount of Rs.11,06,523.47. He admitted that they used to fill the cheques themselves for a particular amount against the order of the party for a particular bill amount, as they had the instructions for the same from the accused party. However, he had not brought any letter regarding such instructions from the accused party. He admitted that the goods were not received by the accused party to the tune of Rs.1,22,794.69 for which a cheque No.506008 dated 17.10.1996 (subject matter of the present complaint) had been issued. He further stated that he will have to check the record regarding the acknowledgment of the goods received against the supply of the goods covering the cheque in question. He denied the

suggestion that the cheques were not issued by accused-respondent No.1 Raji Kapila. He admitted that from Ex.DA, it was not clear that the goods in question were received by the opposite party. Ex.DA did not contain the credit entry because this was only showing the actual outstanding against the accused and the same had been prepared after adjusting the credit, which has not been shown in Ex.DA. The prosecution further examined Chatter Singh as PW-2, who supported the case of prosecution.

After closure of the prosecution evidence, the statement of respondent No.1/accused was recorded under Section 313 Cr.P.C. She stated that she had entered into a family settlement with her son Vivek Kapila on 06.06.1996 and since then he was running the concern. She was never the in-charge of affairs of the concern after 06.06.1996 and had never dealt with the complainant company and no amount was due against her. She never issued any cheque in favour of the complainant party. The said settlement dated 06.06.1996 was duly attested by the respectables of the town and was also signed by her and her son Vivek Kapila. She was not liable to pay any amount nor there was any liability against her to be discharged by her against the complainant company.

In defence, the respondents examined DW-1 Navdeep Gupta, Handwriting and Fingerprints Expert, who had examined the disputed signatures alleged to be of accused-respondent No.1/Raji Kapila and compared those disputed signatures with the standard signatures on the Vakalatnama and he was of the opinion that the disputed signatures had not been written by the same person, who wrote the standard signatures. He further held that all the disputed signatures on all the nine cheques in questions were forged signatures. He submitted a detailed report Ex.D1 and

Ex.D2 to Ex.D19 were the photographs of the disputed and standard signatures, whereas Ex. D20 to Ex. D37 were the negatives of the photographs. The said witness was duly cross-examined by the learned counsel for the appellant/complainant. Mukhtiar Singh Maan, Advocate, District Courts, Ludhiana, was examined as DW-2, who brought the summoned file of Civil Suit No.1007 of 30.08.1996. The said suit was drafted by him as per the instructions given by Vivek Kapila s/o Krishan Kumar Kapila, the plaintiff, and the suit was filed on 30.08.1996. The certified copy of the amended plaint was exhibited as Ex. DX. The plaint was signed by Vivek Kapila, the plaintiff, and was also drafted at his instructions and the witness had signed as his Advocate. The defence also examined DW-3 Jivan Kapila. He stated that he knew Krishan Kumar Kapila, who had started firm M/s Ramanand Mangal Dass at Sahnewal and was killed by terrorists on 03.08.1987. He was survived by his wife Raji Kapila, respondent No.1/accused, two daughters and a son. Both the daughters of Raji Kapila were of marriageable age and son of Krishan Kumar Kapila is Vivek Kapila. After the death of Krishan Kumar Kapila, the shop was closed for some time, however after some time, the shop was being looked after by his son Vivek Kapila, and accused-respondent No.1/Raji Kapila rarely used to go at the shop. Vivek Kapila was married in the year 1995 and thereafter mother and the son developed strained relations and Vivek Kapila used to maltreat his mother Raji Kapila and used to harass her. Thereafter, a compromise was got effected on 06.06.1996 by some respectables including him and a compromise-deed Ex. DA was written in this regard. The compromise deed, it is stated, was signed by Vivek Kapila,

accused-respondent No.1, DW-3 Jivan Kapila and certain other respectables. As per the said compromise, the affairs of the firm were only run by Vivek Kapila and the name of firm was M/s Ramanand Mangal Dass and the management of the said firm and the shop was done by Vivek Kapila and all the assets and liabilities of the said firm were taken over by Vivek Kapila. Thus all the affairs of the firm were in the hands of Vivek Kapila only.

After appreciating the evidence on record, the learned trial Court concluded that the appellant company has miserably failed to prove its case, and accordingly, accused/respondents were acquitted of the charges noted above.

Learned counsel for the appellant has vehemently argued that the learned trial Court had not appreciated the evidence led by the complainant correctly and the impugned judgment is based on whims. The learned trial Court ignored and overlooked the statement suffered by the accused-respondent on 24.08.2002, in which she had admitted that she was ready to make the payment to the tune of Rs.5 lakhs and remaining amount after some period. It clearly amounted to a confession made by the accused before the court and also established that the cheque was issued by the accused in discharge of her liability admittedly. Still further, the learned trial Court wrongly recorded the findings that the cheques did not bear the signatures of Raji Kapila. Even she had moved an application under Section 245 Cr.P.C., which was ordered to be dismissed by the learned trial Court. Furthermore, the learned trial Court had drawn wrong inference against the appellant for not producing the account books. In fact, a strong presumption was available under Section 139 of the Act in favour of the appellant.

Moreover, the Magistrate also did not refer to the certified copy of the statement of account Ex. DA, produced by the complainant side. Thus, the learned trial Court has completely overlooked the evidence and the impugned judgment is legally unsustainable.

On the other hand, learned counsel for the accused-respondents, submitted that the learned trial Court has recorded valid reasons for acquitting the respondents. The compromise/statement relied upon by the learned counsel for the appellant can never be termed as a confession of guilt before the learned trial Court. Still further, the defence had examined DW-1 Navdeep Gupta, Handwriting and Fingerprints Expert, who clearly stated that the cheques had not been signed by respondent No.1. Even the appellant had concealed the account books from the Court and despite an opportunity, the same were not produced before the learned trial Court and the respondent(s) have been rightly acquitted by the learned trial Court.

Admittedly, on 24.08.2002, respondent No.1, made a statement that she had approached the complainant company to compromise the matter and after meeting the official of the company, she agreed to pay a sum of Rs.5 lakhs by 10.09.2002 and the remaining amount within a period of one month thereafter. However, such a statement can never be termed as a confession. In fact, there might be so many reasons for making such a statement that is to save herself from the harassment of criminal trial, undue threat or coercion or misrepresentation by the opposite side etc. In fact for considering a simple statement as a confession, it has to be proved that such statement was made voluntarily, without any fear, pressure, coercion or misrepresentation and the Magistrate must satisfy that such statement was

made without any fear or without any pressure and such satisfaction of the Court has to be recorded along with the said statement. Thus, the statement made by respondent No.1 to compromise the matter with the present appellant can never be termed as a confession. In fact, respondent No.1 was a poor widow and was already into litigation with her son. Consequently, it is quite possible that to get rid of a criminal prosecution, the complainant agreed to pay to the present appellant/complainant. The learned trial Court had rightly observed that Raji Kapila had never signed the statement. Apart from taking up her defence, respondent No.1 had examined DW-1, Navdeep Gupta, Handwriting & Fingerprints Expert Patiala. He had categorically deposed that he had examined the disputed signatures on the cheques and compared the same with the standard signatures of Smt. Raji Kapila. After comparison, he prepared a detailed report Ex. D1. He also placed on record Ex. D2 to Ex. D19, i.e. the photographs of the disputed and standard signatures and the negatives of the photographs as Ex. D22 to Ex.D37 and all these documents were duly proved. He was of the opinion that the disputed signatures Q1 to Q9 were not written by the person, who had written the standard signatures and stated that all disputed signatures Q1 to Q9 were the forged signatures. Apart from that, Raji Kapila had examined DW-3 Jiwan Kapila, who clearly deposed that respondent No.1 was having a dispute with her son Vivek Kapila and he was running affairs of the respondent firm since 06.06.1996 and after 06.06.1996, Vivek Kapila, son of respondent No.1, was looking after the affairs of the firm. Thus, it is ample clear that Raji Kapila had not signed the cheques in question and the findings recorded by the learned trial Court are liable to be upheld by this Court.

Apart from that, in spite of specific opportunity in this regard, the most material witness of the complainant, i.e., PW-1 Raj Guru Singh did not place on record the account books, which could show that the goods were supplied by the appellant to the respondent No.1/accused. Learned counsel for the appellant has referred to Ex. DA to content that the account statement was duly placed on record by way of the said exhibit and the same should have been relied upon by the learned trial Court. However, PW-1 Raj Guru Singh himself admitted that Ex. DA did not contain the credit entry, as the same was only showing the actual outstanding, which was due against the accused and this was prepared after adjusting the credit, which had not been shown in Ex. DA. Even I have seen Ex.DA and the same appears to be an extract from the account books of the complainant company. Even the appellant cannot take advantage of the presumption under Section 139 of the Act, as the said presumption was rebuttable and the respondents had led sufficient evidence to rebut the same.

Still further, most importantly, the appellant clearly failed to prove that the accused had issued the cheque to discharge her legal liability. In fact PW-1 Raj Guru Singh himself admitted in his cross-examination that the complaint had been filed for the dishonour of 09 cheques including cheque No. 506008 and the total amount of these cheques outstanding was Rs.11,06,523.47. However, PW-1 Raj Guru Singh admitted in his cross-examination that the goods worth Rs.1,22,794.69 were not received by the accused party and in lieu of those goods, a cheque bearing No.506008 dated 17.10.1996 was issued and the said cheque was the subject matter of the present complaint as well. In this manner, PW-1 Raj Guru himself admitted

that the accused was not liable to pay the amount mentioned in the cheque No.506008 dated 17.10.1996 and consequently, it is apparent that the cheques were not issued in discharge of the legal liability and the impugned judgment is legally sustainable.

In view of the above-said discussions, this Court is of considered opinion that the findings recorded by the learned trial Court are well reasoned and do not call for any interference by this Court.

Consequently, the application filed by the present appellant/applicant under Section 378(4) Cr.P.C. for grant of leave to file the present appeal is declined. Resultantly, the present application as well as the main appeal are ordered to be dismissed, being devoid of any merits.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back.

In the end, I record my appreciation for Mr. Balram Singh, learned Amicus Curiae, who had rendered his able assistance to this Court.

17.01.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO