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

CRA-S-1679-SB-2010
Date of Decision: 15.05.2023

Tata Iron and Steel Company Ltd. …Appellant

vs.

M/s Ajit Cotton Ginning Pressing Dall Mills & Ors. …Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Pankaj Kundra, Advocate for
Mr. Deepak Sabharwal, Advocate
for the appellant.

Mr. R.S. Bains, Sr. Advocate with
Mr. Vivek Vikas Singh Advocate
for respondent No.2.

Mr. Vikas Mohan Gupta, Advocate
for respondent No.3.

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N.S.Shekhawat J.

1. The present appeal is directed against the impugned judgment dated 29.11.2008, passed by Judicial Magistrate Ist Class, Jalandhar, whereby the respondents/accused were ordered to be acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act") by the learned Trial Court.

2. As per the complaint, the complainant was a limited company registered under the Indian Companies Act and the power of attorneys have been executed in favour of its managers by the company. Even the Area Manager, who was posted at Jalandhar, was conversant with the facts of the

complaint and the complaint had been properly instituted by him. It was averred that the respondents/accused had purchased steel products from the appellant/complainant company through different bills, invoices and the goods covered by these bills/invoices were duly delivered to the accused. Consequently, the respondents became responsible to pay the price of the goods to the appellant company. Finally, in order to discharge the aforesaid legal liability, the respondents issued four cheques dated 06.01.1996 bearing No.005802, dated 04.01.1996 bearing No.005782, dated 06.01.1996 bearing No.005809 and last one dated 07.01.1996 bearing No.005814 for a sum of Rs.12,80,000/-, Rs.5,65,000/-, Rs.55,000/- and Rs.17,00,000/- respectively. All these cheques were drawn on the accounts maintained by the respondents with the Central Bank of India, Mandi Gobindgarh Branch and the respondents had assured that these cheques will be honoured on presentation. Believing the representation made by the respondents, the appellant presented the aforesaid cheques for encashment through its banker State Bank of India, however, the cheques were returned dishonoured with the endorsement dated 29.02.1996 to the effect that the amount of the cheques exceeded arrangement i.e the sufficient funds were not there in the account of the respondents to honour the cheques. The information regarding the dishonour of the cheque was conveyed to the appellant vide debit slip purportedly signed on 27.03.1996, which was received by the appellant on the same day. Thereafter, a legal notice dated 27.03.1996 was issued to the respondents, calling upon to make the payment within the statutory period of 15 days, failing which the appellant would be constrained to institute a criminal complaint against the respondents. Since the payment was not made, the complaint was presented by the appellant before the competent

Court. With these broad averments, the complaint was filed by the appellant before the learned Trial Court.

3. I have heard the learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

4. Learned counsel for the appellant vehemently contended that the findings recorded by the learned Trial Court are erroneous and are legally unsustainable. Learned counsel further contended that the learned Trial Court had wrongly held that there was no proper authorisation and locus standi to file the present complaint. In fact, Mr. Parsanjit Guha, was fully competent to institute the complaint and the photocopy of the power of attorney dated 06.03.1996 was complete on the file. He further submitted that in case there was any defect in the authorisation, the same could be rectified at a later stage. Learned counsel further contended that in view of Section 139 of the Negotiable Instruments Act, there was a presumption that the cheques were issued for a pre-existing liability and the burden was on the respondents/accused to rebut the said presumption in law. The defence had led no evidence to rebut the said presumption and the acquittal of the respondents was liable to be set aside. Learned counsel further contended that the complaint was filed within the period of limitation and the findings recorded by the learned Trial Court in this regard were contrary to the record. Still further, the company was issued a debit slip dated 11.03.1996, when it became aware of the fact that the cheque had been dishonoured. The complainant could never be penalised for the fault on the part of the bank of the complainant, which did not intimate the complainant timely and the impugned judgment is legally unsustainable.

5. On the other hand, Mr. R.S. Bains, Senior Advocate assisted bv Mr. Vivek Vikas Singh, Advocate on behalf of respondent No.2 and Mr. Vikas Mohan Gupta, Advocate on behalf of respondent No.3 vehemently argued that the learned Trial Court had recorded detailed reasons, while acquitting the respondents and the impugned judgment was legally sustainable. Learned counsel for the respondents argued that Mr. Parsanjit Guha was not competent to file the complaint before the learned Trial Court. Neither his power of attorney was exhibited nor the power of attorney of Mr. Firdosh Ardeshiv Wandrewala, who allegedly appointed Mr. Parsanjit Guha as attorney, had been filed on record. Even the resolution of the appellant, appointing him as General Attorney of the appellant company vide the power of attorney dated 29.11.1995 was exhibited by the appellant. Still further, the appellant completely failed to prove that the cheque was issued in discharge of legally enforceable debt or liability and the findings recorded by the learned Trial Court were liable to be upheld in this regard. He further contended that the complaint was rightly held to be time barred and the case of the appellant company was based on forged and fabricated documents, as held by the learned Trial Court.

6. I have heard learned counsel for the parties at length, this Court is of the considered opinion that there is no substance in the appeal filed by the present appellant. The first question, which arises for consideration before this Court is whether the complaint was instituted before the learned Trial Court by a person, who was authorised to file the same. The record reveals that the complaint was initially filed by Mr.Parsanjit Guha, who claimed himself to be the Area Manager of the appellant company. However, at a later stage, Mr. Parveen Kakkar was allowed to proceed further with the present appeal, who

was appointed as attorney of the appellant company. Still, the appellant was required to prove the competence of Mr. Parsanjit Guha, who had initially filed the present complaint before the learned Trial Court. The power of attorney dated 06.03.1996 in this regard was not duly exhibited by the complainant side. Even though as per the complainant, the said attorney contained three pages and were available at three different places in the Trial Court record, still the same is liable to be rejected by this Court. This Court has no reason to believe that the argument raised by the learned counsel for the appellant that the three pages available at different places in the Trial Court record would constitute a complete document. Still further, no witness was examined by the complainant side to prove that the said three pages were part of the same document and the document was complete in all respect and the certification in this regard is completely missing. Apart from that, it had been alleged that a person Mr. Firdosh Ardeshiv Wandrewala had allegedly appointed Mr.Parsanjit Guha as attorney on behalf of the appellant. But no evidence was led by the complainant to prove on record the resolution of the appellant/company appointing Mr. Firdosh Ardeshiv Wandrewala as the General Attorney of the company. Thus, the findings recorded by the learned Trial Court did not suffer from any material irregularity or illegality.

7. Learned counsel for the appellant had vehemently contended that even if there was any defect in the power of attorney at the time of institution of the complaint, the same stood rectified by leading the evidence subsequently and the complaint would be maintainable. Learned counsel for the appellant had relied upon the law laid down by the Hon'ble Supreme Court in the matter of ***M/s TRL Krosaki Refractories Ltd. Vs. M/s SMS Asia Private Limted, 2022***

(2) RCR Criminal 224 in this regard. However, this Court finds no substance in the said argument as well. The facts of the said judgment were entirely different and the judgment was delivered on a different issue by the Hon'ble Supreme Court. In the said case, the complaint was filed in the name of the company i.e " the payee", through General Manager (Accounting) of the company, who was duly authorised to institute the criminal proceedings including the proceedings under the provisions of the " N.I Act" and the civil proceedings on behalf of the complainant company. Still further, the documents were duly exhibited in that regard before the learned Trial Court and the General Manager (Accounting) was having personal knowledge with regard to the averments made in the said case. However, in the present case, there was no evidence to prove that Mr.Parsanjit Guha was duly authorised to institute the present complaint.

8. Even, this Court has also considered the question as to whether the cheques in question were issued to discharge the legally enforceable liability or not. Even Court agrees with the findings recorded by the learned Trial Court that the appellant had completely failed to produce the account books, which was required to maintain under the statutory rules. The appellant/complainant had examined CW-1 Parveen Kakkar, who had admitted that he had no personal knowledge of the present complaint as he was not working in the company at the relevant time. While appearing as a witness, he could not tell how these cheques came in possession of the complainant company and he specifically sought adjournment for bringing on record the account books of the company, but he failed to produce the same on the pretext that it was an old record. The Trial Court was correct in recording that from the perusal of the file, it was apparent that an application was moved by the respondents for production of

account books and other books, but the appellant failed to produce the same and the application was disposed of vide order dated 03.04.2006, when the learned Trial Court recorded that an adverse inference shall be drawn against the appellant/company for non-production of the documents. Still further, no record was filed before the learned Trial Court showing the receipt of the alleged goods sold to the respondents. Even, the learned counsel for the appellant referred to certain invoices, which were only photocopy and were not exhibited as per law and did not advance the case of the prosecution in any manner. Apart from that, the appellant had set up a case that the respondents had purchased steel products from the appellant through bills/invoices and to discharge the partial liability towards the said purchases made by the respondents, they had issued the four cheques in question. However, the appellant clearly failed to bring on record the account registers, stock register which could show that the goods were supplied to the respondents and any legal liability existed against them.

9. Still further, the learned Trial Court rightly held that the complaint in question is hopelessly time barred. The entire case of the appellant was based on Ex. P12, which was not an intimation with regard to the dishonour of the cheque rather it was a debit slip having the date of 11.03.1996. Apparently, Ex.P12 was a tampered document and was a carbon copy. Apart from that, even the said document was not exhibited by following the process of law and it was a document having an inward dak seal, so had Ex.P12 been a debit slip, it should have an outward dark seal. Further, it is partly a carbon copy and partly written with pen in itself. Still further, cheques were dishonoured by the memo dated 29.02.1996 and the notice was issued on 27.03.1996 i.e beyond the period

of 15 days from the date of dishonour of the cheque and the learned Trial Court correctly held that the notice issued by the appellant/company was hopelessly time barred and the complaint was rightly dismissed.

10. In view of the above discussion, there is no merit in the present appeal.

11. Sequally, the impugned judgment dated 29.11.2008, passed by Learned Judicial Magistrate Ist Class, Jalandhar is ordered to be upheld and accordingly, the appeal is dismissed as such.

12. Pending applications, if any, are also disposed off, accordingly.

13. The trial Court record be sent back.

(N.S.SHEKHAWAT)
JUDGE

15.05.2023
hitesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No