IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-940-MA-2012 (O&M)
Date of Decision: 14.03.2023

M/s Rantej Enterprises ...Appellant

Versus

Swaran Singh ... Respondent

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

Present : Ms. Harleen Ahluwalia, Advocate
as Amicus Curiae for the appellant.

Mr. R.K. Kaundal, Advocate
for the respondent.

N.S.SHEKHAWAT, J.

The appellant/complainant has preferred the present application under Section 378(4) read with Section 372 Cr.P.C. for grant of special leave to appeal against the judgment of acquittal dated 26.09.2012 passed by the learned Judicial Magistrate 1st Class, Patiala, whereby, the complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as **'the Act'**) was ordered to be dismissed and the respondent was ordered to be acquitted.

In brief, the applicant/appellant had filed a criminal complaint under Section 138 of the Act by alleging that the applicant is partnership Firm, whereas the respondent/accused was the sole proprietor of the Firm M/S Randhawa Electronics. The respondents purchased electronic goods from the applicant/complainant firm and in discharge of the aforesaid liability issued an account payee cheque No. 756815 dated 08.06.2009 for a sum of Rs. 74,360/- drawn on Punjab National Bank Bassi Pathana, Tehsil and District Fatehgarh Sahib in favour of the applicant/complainant. The applicant was maintaining an amount with State Bank of Patiala, Bhupindra Nagar

Branch, Patiala and the aforesaid cheque was presented for encashment. However, the cheque was dishonoured with the endorsement “Funds Insufficient” vide memo dated 01.07.2009. The applicant/complainant received the intimation regarding bouncing/return of the cheque as unpaid on 07.07.2009 and he got a legal notice issued through his counsel on 27.07.2009 and called upon the accused to make the payment within a period of 15 days of the receipt of the legal notice. However, even after the statutory period of 15 days, the respondent/accused failed to make the payment of the aforesaid amount of Rs. 74,360/- to the applicant/complainant. Consequently, the complaint was filed by the applicant/complainant in the Court of learned Judicial Magistrate 1st Class, Patiala.

During the course of the trial, a notice of accusation under Section 138 of the Act was served on the respondent/accused, to which, he pleaded not guilty and claimed trial. The complainant examined CW1 Baljit Singh, who had reiterated the facts as narrated by him in the complaint and also exhibited all the documents on behalf of the complainant side.

The statement of the respondent/accused was recorded under Section 313 Cr.P.C. and he stated that the cheque in question bearing No. 756815 was given blank to the applicant/complainant as security in the year 2004. Subsequently, various cheques bearing numbers 756852 dated 16.11.2004 amounting to Rs. 20,000/- and 756854 amounting to Rs. 20,000/- were issued by him and were credited in the account of the applicant’s firm in November 2004. Cheques bearing No. 756864 and 756866 for a sum of Rs. 20000/-

each were issued by him to the applicant and were also credited in the name of his firm prior to December 2004. After May 2007, no transaction and dealing of any kind had taken place between him and the applicant/complainant and the complaint had been filed by misusing the cheque, by filing the amount of Rs. 74,360/- and the date with himself with his own hand which was lying blank with the bank as security prior to May 2004. The accused did not lead any evidence in his defence.

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

Learned counsel for the applicant vehemently argued that the learned trial Court has overlooked the statutory provisions of Section 139 of the Act and the settled position of law, as reported by the Hon'ble Supreme Court in number of judgments. She contends that Section 139 of the Act provides for a presumption that holder of the cheque received the cheque for the discharge of debt or other liability and unless the contrary is proved by the accused, the accused cannot be absolved of the liability. Still further, the burden of proof that there was no existing debt or liability, was on the respondents and the impugned judgment is legally unsustainable.

On the other hand, the learned counsel for the respondents vehemently argued that the learned trial Court has duly considered the evidence on record in the light of settled preposition of law and the impugned judgment is liable to be upheld by this Court.

The learned trial Court has rightly observed that the applicant/complainant had failed to prove the existence of any legal liability against the respondent/accused on the date of the issuance of the cheque. The applicant had examined CW1 Baljit Singh in support of his case, who admitted in his cross-examination that the cheque in question bearing No. 756815 was given blank by the accused and he had filled the same on instructions by the accused. He further admitted that the amount of cheque was filled by him in figures as well as words. Even the date of cheque was also written in his hand. He further stated that the last purchase was made by the accused from him on 07.02.2007. He admitted that the accused had made payment of Rs. 10,000/- on 16.12.2006 and had also made payment of Rs. 15,000/-. He further admitted that different amounts were paid from time to time by the accused by way of cheques after issuance of the present cheque. He further admitted that the cheque No. 756852 of Rs. 20,000/-was credited on 16.11.2004, cheque No. 756854 of Rs. 20,000/- was also credited to the account of his firm in November 2004 and cheque No. 756863 of Rs. 20,000/- was also credited in his account in December 2004. Apart from that, Cheque No. 756864 and 756866 of Rs. 20,000/- each had also been credited in the account of the firm in December 2004. He further admitted that the accused had been purchasing electronic goods,i.e. colour T.V., washing machines etc., from their firm. He could not tell orally from which period the accused started purchasing electronic goods from them. He admitted that proper account books of their firm were being maintained in daily routine business and the same were produced before the Income Tax and Sale Tax Department from time to time. The balance sheets were also being prepared and the accused had been paying the amount due towards him by way of cheques and cash. He further stated that the amount of cheque in question related to the bill, which might be 2/3 in numbers for the period prior to year 2009. He further admitted that he did not mention the details of the periods and the bills regarding which the cheque amount remained due towards the accused. The cheque amount was duly mentioned in the balance sheet of the firm against the accused and he could produce the bills regarding which amount of cheque remained due towards the accused. However, he did not produce any bill to that effect.

Thus, it cannot be safely held that the firm of the applicant/complainant was a registered firm and the entire record was maintained by him. It was claimed that the cheque in question was issued in discharge of the said lability. However, neither any relevant record was produced nor any bill had been produced on the file to show that the electronic goods were delivered to the respondent/accused and any amount was outstanding against the accused. The applicant/complainant failed to place on record any statement of account, account books or balance sheet on the file. Even CW1 Baljit Singh stated in his cross-examination that it was a registered firm and was maintaining proper books of account, however, no document was placed on record to show the existence of any legally enforceable debt/liability against the respondent/accused on the date of issuance of the cheque.

In view of the above discussion, there is no merit in the present case and the application with prayer to grant special leave to appeal is dismissed being merit-less.

All pending applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

In the end, I record my appreciation for Ms. Harleen Ahluwalia, learned Amicus Curiae, who had rendered able assistance to this Court.

14.03.2023 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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