

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2279-MA-2016
Date of Decision: February 01, 2023

M/s Bharat Cement & Iron Store

...Applicant/Complainant

Versus

Kuldeep Singh @ Makhan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Himanshu Puri, Advocate,
for Mr. Sherry K. Singla, Advocate,
for the applicant/Complainant.

Mr. Kartik, Advocate,
for Mr. Ashish Pannu, Advocate,
for the respondent.

SANJAY VASHISTH, J.

1. Present application, under Section 378(4) Cr.P.C., has been filed by the applicant/Complainant – M/s Bharat Cement & Iron Store, seeking special leave to appeal, against the judgment of acquittal, dated 02.11.2016, passed by learned Judicial Magistrate Ist Class, Nabha, in Complaint No. 98T of 01.09.2015/23.11.2015 – ‘M/s Bharat Cement & Iron Store v. Kuldeep Singh alias Makhan Singh’.

2. Specific case of the applicant (here-in-after referred to as ‘the complainant’) is that respondent (here-in-after referred to as ‘the accused’) had purchased tiles from it, for the worth of Rs.1,05,899/-, vide Bill No. 2335, dated 20.05.20215, and tiles worth Rs.1,00,321/-, vide Bill No. 2346, dated 05.06.2015. In discharge of his part liability to pay the aforesaid amount, accused had issued Cheque No. 006428, dated

14.07.2015, for a sum of Rs.1,50,000/-, in favour of the complainant. On bouncing of the cheque with the remarks 'Insufficient funds', information was received from Bank, vide Memo. dated 15.07.2015, and thereafter legal notice and other legal formalities were completed before filing of the complaint.

3. After closing of evidence of the complainant, statement of accused under Section 313 Cr.P.C. was recorded, by putting him incriminating evidence appearing against him. Accused took a specific stand that cheque in question was given to the complainant in advance for supplying building material. However, neither material was supplied nor cheque in question was returned, rather it was misused by the complainant. Upon this, learned Trial Court formulated following two basic issues for determination:

- “I) Whether accused issued cheque Ex. P1 in favour of complainant in order to discharge his legally enforceable liability?
- II) Whether accused has been able to rebut the presumption under Section 139 of Negotiable Instruments Act?”

4. While dealing with first issue, i.e. Whether accused has been able to rebut the presumption under Section 139 of Negotiable Instruments Act, learned Trial Court has found that complainant failed to produce the carbon copies of the bills. Rather, complainant has produced on record the original bills. Thus, learned Trial Court has concluded that

production of original bills by the complainant is improbable circumstance, because in usual course bills are handed over to the purchasers and carbon copy thereof is retained by the shopkeeper.

5. Learned Trial Court has also considered the aspect that accused took a specific plea of not supplying of any building material to him. Complainant has also not brought on record any evidence that any material was sold and then delivered to the accused. In this regard, in para No. 11 of the impugned judgment, learned Trial Court has held that even the person, who as per complainant delivered the building material to accused through a cart-puller, namely, Mithu, has not been examined by the complainant. Findings recorded by learned Trial Court in para Nos. 10 and 11 says as under:-

“10. Having considered the contentions of Id. counsel for the parties, this Court finds that in order to attract the provision of Section 138 of the Act, it must be proved that the cheque in question was issued by accused in order to discharge his legally enforceable liability and at the time of issuance of cheque there existed such legally enforceable liability or debt towards the accused. The very foundation of present complaint is two bills Ex. P2 and Ex. P3, on the basis of which, complainant has come forward asserting that accused had purchased building material from the complainant and in order to discharge part liability issued the cheque in question, which on being presented in the bank was dishonoured with the remarks “Insufficient funds”. Therefore, in order to prove that there did exist legally enforceable liability towards accused at the time of issuance and execution of cheque Ex.P1, complainant firm examined CW-1 Ravi Kumar who deposed that vide bills Ex. P2 and Ex. P3 accused had purchased tiles from the complainant firm. However, instead of producing photocopies or carbon copies of these bills, the original bills have been produced on record. This court can take judicial notice of the fact that as and when a customer purchases goods from any shopkeeper, the original bill thereof is usually given to the customer and carbon copy thereof is

retained by shopkeeper. The accused has come up with the specific plea that he never purchased any building material from complainant firm. The cheque in question was given to complainant firm in advance for supplying building material. However, building material was not supplied nor the cheque was returned and the same is being misused in the present complaint. It is also case of the accused that a blank signed cheque was retained by complainant and it was subsequently filled in by complainant and therefore execution of cheque is not proved.

11. *The material aspect to be seen in the present case is whether complainant had actually delivered goods to accused and in lieu thereof accused had issued cheque in question or not. In this regard, complainant firm examined CW1 Ravi Kumar who in cross examination deposed that cheque in question was filled in with his own hand. Even date and amount thereof is written with his own hand. He further admitted it to be correct that whenever building material is sold to any customer, the original bill is issued to customer. He further admitted it to be correct that original bills Ex.P2 and Ex.P3 were issued to accused. However, in the same breath he further deposed that original bills were issued but accused did not collect the same. He further deposed that there is no receipt of articles from the accused. He further deposed that building material was delivered to accused through one Mithu, a cart puller. However, he does not know the size of said cart. Once accused has taken specific plea that building material was never delivered to him and on the other hand, as per own case of the complainant building material was delivered to accused through a cart puller namely Mithu, then in that eventuality, it was incumbent upon the complainant to examine said cart puller to prove the delivery of building material to accused. But unfortunately he was not examined in the present case and therefore delivery of goods remained unproved on file.”*

6. While addressing arguments for the purpose of seeking special leave to appeal, learned counsel for the complainant has relied upon judgment of Hon’ble Apex Court in the case of **P. Rasiya v. Abdul Nazer and another**, 2022 (4) R.C.R. (Criminal) 674, and has referred to paragraph 7 of the judgment. Learned counsel submits that once signature on the cheque is admitted by the accused, directly presumption

under Section 139 of the Negotiable Instruments Act, 1881, would start against him and complainant need not to prove his own case advanced through the complaint even.

7. While going through the judgment cited by learned counsel for the complainant and by reading paragraph 7 of the same, this Court finds that in said particular case, complainant had failed to prove '*nature of transaction and source of funds*' and considering the same as not a big defect in the case of the complainant in the said case, law of presumption was considered against the accused.

8. Here, facts in the present case are quite different. It is not a case where complainant has failed to prove nature of transaction and source of funds. It is a specific case of the complainant that accused had purchased tiles from complainant, worth Rs.1,05,899/- and Rs.1,00,321/-, vide Bill No. 2335 dated 20.05.2015, and Bill No. 2346 dated 05.06.2015, respectively, and for the said purchase of tiles, cheque in question was issued by the accused.

9. Case built up by the complainant has been examined by this Court keeping in view the observations made by Hon'ble the Apex Court in the case of **P. Rasiya (supra)**, and it is found that facts and circumstances of the cited case are not applicable to the present case. It has already been observed that complainant failed to prove the contentions raised in the complaint itself. In the absence of same, law of presumption under Section 139 of the Negotiable Instruments Act, 1881, would not start operating against the accused for the purpose of shifting

of burden to prove specific reason of issuing of cheque, which got bounced. Complainant has neither brought on record any receipt of receiving of tiles nor carbon copy of the bills referred in the complaint. Even the person, namely, Mithu, in whose cart tiles were delivered, has not been examined. Thus, complainant himself has failed in proving the contentions of its own complaint.

10. In view of well reasoned judgment passed by learned Trial Court and the findings recorded thereupon and after noticing the contentions addressed by learned counsel for the complainant, I find that there is no illegality in the impugned judgment and same is worth to be maintained.

11. Present application, seeking special leave to appeal, being devoid of merit, is accordingly dismissed.

(SANJAY VASHISTH)
JUDGE

February 01, 2023

Pkapoor

Whether Speaking/Reasoned: **YES/NO**

Whether Reportable: **YES/NO**