

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-310-2021 (O&M)

Date of Decision: 08.02.2023

Standard Seeds Co.

... Applicant

VS.

M/s Harkesh Trading Co.

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Sethi, Advocate for the applicant

Sandeep Moudgil, J.

This application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 26.02.2020 passed by JMIC, Yamuna Nagar at Jagadhari (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act.

Learned counsel for the applicant/complainant has vehemently argued that he has proved all necessary ingredients of offence punishable under Section 138 of the NI Act. He further argued that respondent had purchased seeds from the applicant/complainant vide several bills/invoice and respondent made payment of Rs.2,00,900/- only and cheque Ex.C1 was issued by respondent in favour of applicant/complainant in discharge of its remaining outstanding liability to the tune of Rs.3,37,100/-. It is submitted that version of applicant/complainant has been duly proved by CW1-Parveen Kumar in his deposition and nothing material came to the fore during his cross-examination so as to discredit his testimony. He further contended that the trial court has erred in accepting the version put-forth on behalf of

respondent since the same was not plausible and convincing and is liable to be discarded at the outset.

Having heard ld.counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

The trial court, after considering the rival versions of both the parties and specific averments made by CW1-Parveen Kumar in his cross-examination, dismissed the complaint primarily on the ground that the version put-forth by the applicant/complainant regarding non-return of 294 sacks of seed is not plausible and convincing and defence version of respondent inspires more confidence since CW1-Parveen Kumar has admitted the factum regarding receipt of notice dt.26.11.2015, which is Ex.D3. Perusal of said legal notice Ex.D3, which was tendered by respondent in its defence evidence, reveals that it was specifically averred therein that respondent had made purchase of 600 bag weighing 20 K.G. each in the sum of Rs.4,68,000/- vide invoice No.76 dt.10.10.2015. Said seed supplied by applicant/complainant to respondent was found of defective quality as respondent received complaints in that regard from the respective purchasers. It was further stated in said legal notice that respondent had made payment of Rs.1.80 lacs against said purchase and a sum of Rs.5,000/- was paid as transportation charges. The respondent had called upon the applicant/complainant to receive back said defective seed sacks, same being of defective quality.

Since CW1-Parveen Kumar has admitted the factum regarding receipt of above stated legal notice dt.26.11.2015 Ex.D3, onus lied upon the

applicant/complainant to explain as to what steps were taken by applicant/complainant to redress the grievance of respondent . However, version put-forth by applicant/complainant is conspicuously silent in this regard and learned counsel for applicant/complainant failed to furnish any plausible explanation in this regard even during the course of arguments. As per version of respondent , return of defective seed sacks was made by respondent to applicant/complainant and receipt Mark-A was issued by applicant/complainant in this regard. CW1-Parveen Kumar admitted that receipt Mark-A had been issued upon a note in similar fashion as that of the note of applicant/complainant.

The trial court also observed that nothing has been divulged by applicant/complainant as to in what manner respondent would have accessed/obtained blank note of applicant/complainant concern, upon which said note would have been manipulated/prepared by respondent . The defence version put-forth by respondent regarding return of 294 bags of defective seeds seems to be plausible and convincing. Furthermore, perusal of reply dt.09.06.2017 of legal notice sent by applicant/complainant to respondent regarding dishonour of cheque in question reveals that there is a specific mention therein regarding sending of legal notice dt.26.11.2015 by respondent to applicant/complainant. Thus, respondent has been consistent in its version right from the very inception and it is not so that respondent put-forth above stated defence version at belated stage of the trial so as to shirk its liability towards the applicant/complainant. The factum regarding payment of sum of Rs.1.80 lacs by respondent to applicant/complainant on 24.08.2015 is not disputed on the part of applicant/complainant and said fact

is manifest from the contents of account statement Ex.D8 of M/s Harkesh Trading Company. Even the ledger account of Standard Seeds Company, maintained by respondent , has been proved in his evidence by DW2-Ashok Kumar, Accountant of respondent concern. He testified that said ledger account had been prepared by his father in capacity of being the proprietor of Harkesh Trading Company which reveals that all the relevant entries have been reflected therein. There is a mention therein regarding invoice no.165 dt.29.12.2014 which purchasing to the tune of Rs.37,000/- was made by respondent and also in the said ledger account Ex.D1, there is a mention regarding return of 294 seed bags dt.21.12.2015 as well as there is mention regarding purchase of wheat seeds worth 4,68,000/- vide bill no.76 dt.10.10.2015 and freight charges to the tune of Rs.5,000/- dt.10.10.2015.

The trial court rightly observed that from perusal of contents of document Ex.D1, it is clear that a specific mention has been made regarding return of 294 bags of seeds, which adds credibility to the defence version of respondent and as such the version putforth by respondent was held to be plausible and convincing as it has been duly established on record beyond preponderance of probabilities that respondent had returned 294 bags of defective seeds to applicant/complainant on 21.12.2015.

In view of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court and as such the present application seeking leave to appeal is dismissed.

08.02.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No