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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-368-2023 (O&M)
Date of decision: 07.08.2023

RAMESHWAR DASS ...Appellant

VS

M/S KAKRALA TRADING CO & ORS …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jagdish Manchanda, Advocate,
For the appellant.

Ms. Palak Jain, Advocate for
Mr. C.B. Kaushik, Advocate for the respondents.

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ARUN MONGA, J. (ORAL)

Present appeal has been filed by the appellant against order/judgment dated 28.01.2016 passed by learned Judicial Magistrate First Class, Guhla whereby complaint filed by the appellant against respondent-accused for commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 was dismissed and accused persons were acquitted of the charges framed against them.

2. Leave to appeal was granted by this Court vide order dated 02.08.2023.

3. Briefly outlining the case, appellant herein lodged a complaint against respondents No.1 to 3 under Section 138 of the Negotiable Instruments Act. It was stated that respondents no. 2 and 3 borrowed Rs. 3,10,000/- in cash from the appellant for business purposes, promising to repay the amount in November 2010. Respondent No.2 issued two cheques, bearing No. 953525 and No. 953526, dated 10.11.2010 and 30.11.2010, respectively, from respondent No.1's account. These cheques, drawn on Oriental Bank of Commerce, Cheeka, were dishonoured due to insufficient funds. Respondents No.2 and 3 are partners of respondent No.1, thus responsible for its business dealings. Despite sending a statutory notice, the appellant's complaints under Section 138 of the Negotiable Instruments Act were not addressed.

4. The appellant moved an application for correction/amendment in the complaint, acknowledging a typographical error in mentioning the cheque numbers as 933525 and 933526 instead of the correct numbers 953525 and 953526. The appellant asserted that the mistake was unintentional and sought correction in order to maintain the accuracy of the complaint without altering its nature. However, this application was dismissed by the trial court on 31.07.2012 (Annexure P-4), and the subsequent revision petition met a similar fate on 11.07.2014 (Annexure P-5).

5. The appellant's contention is based on the accidental typographical error in the cheque numbers in the legal notice which got transmitted further in the complaint under Section 138 of Negotiable Instruments Act. Upon realizing this error, the appellant promptly sought correction through a court application, which was unfortunately denied by both the trial court and the revision court, as evident from Annexure P-4 and Annexure P-5 respectively.

6. Learned counsel for appellant argues against the reasoning employed by the lower courts. The courts denied the correction of cheque numbers on the grounds that the same numbers were mentioned in the legal notice and the initial complaint under Section 138 of the Negotiable Instruments Act. This line of reasoning, according to the learned counsel, incorrectly assumes that the typographical error was deliberate, instead of an inadvertent mistake.

7. Learned counsel asserts that both courts below committed a material irregularity by presuming that the error was intentional. Whereas, the typographical mistake was carried over from the legal notice to the complaint when the complaint was being drafted in the basis of the legal notice. Lack of knowledge qua the same prevented the appellant from rectifying the error during the trial proceedings until subsequently, when the mistake was acknowledged and sought to be corrected.

8. Learned counsel relies on judgments of Delhi High Court in case "***Santosh Arora Vs. Jai Narain Aggarwal and State",***[1] and Madras High Court in case "***DillipS.Dhanukar, Chairman and Managing Director Indo Biotech Foods limited Vs.***

[1] 2011 (1) DCR 311

India Equipment Leasing Ltd. and another ".[2] He states that typographical errors, in somewhat similar circumstances, were allowed to be corrected by both high courts, giving cogent reasons.

9. Conversely, the respondents' counsel opposes the appellant's plea and supports the validity of the impugned orders relying on the reasons given therein.

10. After considering the arguments presented by both sides, it is my considered opinion that the judgments cited by the appellant's counsel are fully applicable to the current case. I am in respectful agreement with the views expressed therein.

11. Furthermore, in the examination of the accused under Section 313 Cr.P.C., there is a candid admission by the accused *qua* the actual cheques with the corrected numbers. Bank records and trial testimony also support the assertion that the incorrect typing of cheque numbers was a *bona fide* error that was inadvertently transmitted to the complaint due to sheer oversight.

12. Based on the aforementioned analysis, it is evident that the typographical error of cheque numbers, was indeed unintentional. Consequently, impugned order lacks a valid basis, cannot be sustained and is hereby set aside. Accordingly, the application to correct the cheque numbers is allowed. The corrected cheque numbers are already on record before the trial Court. Proceedings shall commence from the same stage when impugned order was passed by learned JMIC.

13. Pending application (s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

07.08.2023
Vandana

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

[2] 2011 (4) BC 262.