

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209. CRA-AS-5977-2018 (O&M)
Reserved on:16.12.2023
Pronounced on:20.12.2023

Abhishek Gautam ... Appellant

Versus

M/s Tirupathi Stainless Steel Traders and another ... Respondents

2. CRA-AS No.7987 of 2018 (O&M)

Abhishek Gautam ... Appellant

Versus

M/s Tirupathi Stainless Steel Traders and another ... Respondents

3. CRA-AS No.7988 of 2018 (O&M)

Abhishek Gautam ... Appellant

Versus

M/s Tirupathi Stainless Steel Traders and another ... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vaibhav Sharma, Advocate
for the appellant.

Mr. Satish Garg, Advocate and
Mr. Sumit Sangwan, Advocate
for the respondents.

HARPREET SINGH BRAR, J.

1. By this common order, three appeals, details of which have been given in the head note, are being disposed of, as the issue involved therein is similar. However, the facts are being culled out from CRA-AS No.5977 of 2018 for the sake of brevity.

2. The appeal in CRA-AS No.5977 of 2018 has been preferred by the appellant against the judgment dated 13.11.2017 passed by the Judicial Magistrate 1st Class, Gurugram whereby respondent No.2 has been acquitted under Section 138 of the Negotiable Instrument Act, 1881.

3. In brief, the facts are that the appellant-complainant along with respondent No.2 and one Shri Krishan Prakash Maheshwari entered into a partnership business of trading stainless steel pipes under the name and style of M/s Tirupathi Stainless Steel Traders at B-129, Basement, Ardee City, Sector 52, Gurugram. The said partnership firm was dissolved on 24.06.2015 and respondent No.2 promised that he would pay ₹23,95,076/- to the appellant towards profit, which was reduced into writing by respondent No.2 and other outgoing partners. Thereafter, respondent No.2 on behalf of respondent No.1 issued three post dated cheques dated 20.10.2015, 20.11.2015 and 20.12.2015 for an amount of ₹10 lakhs each, drawn on Bank of Maharashtra, SCO No.86, District Shopping Centre, Sector 56, Gurugram to the appellant, which included his profit and assured him that said cheques would be encashed on presentation. The appellant deposited cheques dated 20.10.2015 and 20.11.2015 amounting ₹10 lakhs each for encashment, which were dishonoured. The appellant issued demand notices to respondent No.2-accused for payment of the cheque amount and when he failed to do so, two complaints were filed against him. The appellant also presented the third cheque dated 20.12.2015 amounting ₹10 lakhs for encashment in his bank account on 24.12.2015 but the said cheque was also dishonoured on 28.12.2015 with an endorsement of 'payment stopped by drawer'. A demand notice of 15 days was served upon respondent No.2 on 04.01.2016 through registered post to make the payment of the cheque amount and when he failed to do so, present complaint was filed.

4. On finding a *prima facie* case against the respondents under Section 138 of the NI Act, notice of accusation was served upon respondent No.2-accused vide order dated 11.05.2016, to which he pleaded not guilty and claimed trial. In order to prove his case, the appellant examined himself as CW1 and tendered affidavit Ex.CW1/4 along with documents Ex.C1 to C9 and examined Sonu Kumar as CW2 and thereafter closed the evidence.

5. Statement of respondent No.2-accused under Section 313 Cr.P.C. was recorded and the incriminating evidence was put to him to which he pleaded false implication and claimed innocence. He examined himself as DW1 and tendered his affidavit Ex.DW1/A along with documents Ex.D1 to D6.

6. After appreciating the evidence led by both the parties, the learned trial Court acquitted respondent No.2 from the notice of accusation framed against him. Hence, the present appeals.

7. Learned counsel appearing for the appellant submitted that the learned trial Court has not considered the factual aspect and the admission of respondent No.2 while deposing before the learned trial Court and wrongly placed reliance upon the purchase order dated 14.07.2015 and cancellation of purchase order dated 03.09.2015 (Annexure P-3 colly). As per the cross-examination of respondent No.2, it is admitted that the firm mentioned in the purchase order is owned by the cousin sister of respondent No.2. Moreover, the particulars of the rate at which the goods were to be delivered are not mentioned in the purchase order and first and last consignment was scheduled to be delivered on 16.08.2015 and 16.12.2015 respectively. However, the purchase order was cancelled on 03.09.2015 on the ground of late delivery of goods whereas a perusal of Ex.C1 (Annexure A-1) indicates that respondent No.2 had decided to dissolve the partnership with the appellant and bifurcation of the profit between the appellant,

respondent No.2 and K.P. Maheshwari and the cheques in question as well as the amount of cheques were duly recorded in the settlement deed. Respondent No.2 in his cross-examination admitted the execution of settlement deed Ex.C1. The learned trial Court has failed to consider the case in the right perspective. The cheques in question were issued on 20.10.2015, 20.11.2015 and 20.12.2015 and the stand taken by the respondent No.2 is self-contradictory as on the one hand, he admits the execution of settlement deed Ex.C1 and at the same time, sets up a defence that these cheques were issued against the purchase order dated 14.07.2015, which was cancelled on 03.09.2015. The respondent No.2 gave instructions to stop payment of cheques on 22.08.2015 pertaining to his back account maintained with the Bank of Maharashtra. All factual aspects have neither been considered by the learned trial Court nor dealt with, in spite of making specific arguments in this regard. Moreover, a perusal of Ex.C1 indicates that the settlement deed was made on 24.06.2015 and the purchase order was made at a much later stage on 14.07.2015. It is not believable that on 24.06.2015, the respondent No.2 would have any knowledge with regard to purchase order to be placed on 14.07.2015 regarding which cheques were given on 24.06.2015 and that too, in the absence of any rate at which the purchase order was being made.

8. Per contra, learned counsel appearing on behalf of respondents submitted that the impugned judgment is well reasoned and the learned trial Court has taken all the facts into consideration. Moreover, there is nothing on record that the appellant and respondent No.2 were partners and in the absence of any partnership deed, the dissolution deed dated 24.06.2015 Ex.C1 is of no consequence and the same is liable to be eschewed from the evidence. The

respondent No.2 has proved on record that the cheques given as security by him had been misused by the appellant.

9. Having heard learned counsel for the parties and after perusing the record of the case, this Court finds force in the arguments advanced by the counsel appearing for the appellant that the learned trial Court has not considered the factual position as amplified by him before this Court. In view of the aforesaid facts and circumstances of the case, the judgment dated 13.11.2017 passed by the Judicial Magistrate 1st Class, Gurugram is set aside and the matter is remanded back to the trial Court for fresh consideration in accordance with the factual matrix and the evidence led by the parties. Parties are directed to remain present before the trial Court on 08.01.2024.

10. All appeals are partly allowed in above terms. However, nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

December 20, 2023
Pankaj*

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