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2024:PHHC:169860

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-A-1620-MA-2015 (O&M)
Date of Decision: 05.08.2024

M/S INDO FARM IND. LTD …..APPLICANT/APPELLANT

VERSUS

M/S ATUL AUTO TRACTORS & ANR .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Mohunta, Advocate
for the applicant/appellant.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 378(4) Cr.P.C against the judgment and order dated 30.07.2015 passed by JMIC, Chandigarh (in short- 'Trial court') arising out of the proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881, on the basis of complaint filed against M/s Atul Auto and Tractors, wherein the respondent have been acquitted of the charges levelled against him.

2. For brevity, factual matrix of the case unfolds as that Atul Vinayachandra Shah, being proprietor of M/s Atul Autos and Tractors, requested for appointment, as dealer, for Satara (Maharashtra) and the applicant company appointed the accused as its non-exclusive authorized dealer for the aforesaid area, whereupon the parties started their business relationship of manufacturer and dealer, and the said dealership was continued to be extended from time to time. The accused-respondent was placing orders

for supply of tractors and spare parts, at periodic intervals, and the same were supplied to them on credit basis. It was maintaining a current running account for its transactions with the accused. The accused got issued a bank guarantee of Col. R.D. Nikam Sahakari Bank Ltd., Satara, through its Managing Director, for Rs.26 lacs dated 29.07.2006 and the same was extended upto 23.09.2009 for Rs.40 lacs. However, when it presented the aforesaid bank guarantee for encashment qua the outstanding towards the accused, it came to know that the accused has committed forgery and cheating by issuing a fraudulent bank guarantee. Thereafter, the accused, being proprietor of the said firm, issued cheque No.363727 dated 16.01.2010 for Rs.43,67,100/- drawn on HDFC Bank Ltd., Maharashtra (the said cheque). It presented the said cheque for encashment through its banker, however, the same was dishonoured vide memo dated 20.01.2010 (the said memo) with the remarks “Account closed”. It issued the legal notice dated 17.02.2010 (the said notice), as envisaged u/s 138 of the said Act, and called on the accused to make payment of the said amount within the stipulated period, but to no avail which compelled the applicant to file complaint which was dismissed vide order dated 30.07.2015. Hence, the present appeal.

3. The learned counsel for the applicant/appellant, while arguing against the judgment of the trial Court, has contended that the approach of the trial Court in relying upon the respondent version is way too lenient wherein it has been stated that that nothing was outstanding and the accounts had been finally settled with the authorized representative of the complainant company whereas no documentary evidence in this regard stands supported by the respondent.

4. He further contends that the presumption u/s 139 of the said Act operates in favour of the applicant especially when the factum of issuance of cheque in question and signatures thereon were admitted by the accused-respondent. Referring to the judgments of the Hon'ble Supreme Court of India in case titled as ***"T.Vasanthakumar v. Vijayakumari, 2015 (2) RCR (Criminal) 894"*** and three Judge Bench of our own High Court in ***"Rangappa v. Sri Mohan, 2010(3) R.C.R. (Criminal) 164"*** it is contended by the learned counsel for the applicant/appellant that the presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

5. Heard and case file also perused.

6. At this stage before examining the merits of the case, it is apposite to mention section 138 of Negotiable Instruments Act 1881 and Section 142 of the Negotiable Instruments Act, 1881 which are reproduced herein below:-

> *138. Dishonour of cheque for insufficiency, etc., of funds in the account.—*
> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without*

prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section,"debt or other liability" means a legally enforceable debt or other liability.

Section 142 The Negotiable Instruments Act, 1881

(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a)no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b)such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had

> *sufficient cause for not making a complaint within such period.*
>
> *(c)no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.*
>
> *(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—*
>
> *(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or*
>
> *(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.*
>
> *Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."*

7. It is a settled proposition of law that in case of dishonour of a cheque having being issued in respect of uncertain future liabilities, Section 138 of NI Act is not applicable to launch prosecution against the drawer, as prosecution u/s 138 of NI Act attracts only in cases of current and past liabilities. Further, the law is settled to the extent and effect that to hold any person guilty u/s 138 of NI Act, it is required to prove that the said cheque has been issued qua legally enforceable debt or any other liability. However, in the facts and circumstances of the present case, it appears that there exist no

liability against respondent qua the cheque amount and when there is no liability, no question of discharge of any such debt or liability exists.

8. The applicant's case is that the said cheque was issued by the respondent qua supply of tractors. However, from perusal of the record in hand, it is apparent that the applicant has failed to prove outstanding balance of Rs. 43,67,100/- as on 16.01.2010 or 20.01.2010 against the respondent and issuance of the said cheque qua its payment.

9. Law is also settled to the extend and effect that mere assertions are not enough and the party asserting has to prove the same by leading cogent and convincing evidence. Accordingly, it can be safely concluded that the applicant has squarely failed to prove the accusation against the respondent u/s 138 of the NI Act.

10. Therefore, no manner to doubt is left that the cheque was issued by the respondents in lieu of a legally enforceable debt and liability because the applicant failed to lead any evidence in this regard. Thus, in the absence of any such evidence from the applicant,the trial Court has gone right to dismiss the complaint under Section 138 of the Negotiable Instrument Act and acquitting the respondent-accused of the accusation against them.

11. Accordingly, this Court also finds no fault and ambiguity in the judgment dated 30.07.2015 passed by the trial Court and, therefore, finding the instant petition being devoid of merits, stands dismissed.

12. Pending miscellaneous application, if any, stands disposed off.

05.08.2024 **(SANDEEP MOUDGIL)**
Poonam Negi **(JUDGE)**

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