

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

CRM-A-479-MA-2015

Date of Decision: 04.11.2024

M/S INDO WORLDWIDE COLLOIDS PVT. LTD

.....APPLICANT

VERSUS

KULWANT STEEL

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rose Gupta, Advocate
for the applicant.

SANDEEP MOUDGIL, J

1. This is an appeal filed against the impugned judgment of acquittal passed by the learned Judicial Magistrate, Ist Class, Hisar, whereby the respondent/accused has been acquitted in the complaint case being Complaint No.1706-II of 2012 titled “M/s Indo Furnace Private Limited, Delhi Road, Hisar Vs. Kumawat Steel” filed under Section138 of the Negotiable Instruments Act, 1881.

2. Succinct to the facts of the instant case, the complainant is a private limited company constituted under the provisions of the Companies Act, 1956, having its registered office and works at 6th KM Stone, Delhi Road, Behind Jindal Stainless Limited, Hisar, and it has authorized its officer Sh.Vivek Jain, to file the present complaint vide a validly passed resolution. It is averred that the complainant had established an industrial

unit for manufacturing high quality M.S. Girders at Hisar. The accused had been purchasing the goods and he had been making part payments of these goods to the complainant from time to time, which are reflected in the accounts books maintained by the complainant in regular course of its business. As per these books, an amount of Rs.27,20,157/- was due towards the accused from 01.04.2012 to 26.10.2012. In order to discharge the aforementioned existing, outstanding and legally enforceable liability, the accused issued cheque bearing No.965841 dated 13.08.2012 for a sum of Rs.2,00,000/- (Rs.Two lacs only) drawn on HDFC Bank, Railway Road, Hisar, in favour of the complainant, however, the same on being presentation for realization with HDFC Bank, Delhi Road, Hisar, was dishonoured with the remarks “insufficient funds” vide bank return memo dated 18.10.2012. The complainant served a legal notice upon the accused on 30.10.2012 but the drawer failed to make the due payment within the stipulated period of 15 days, despite service of the legal notice dated 30.10.2012 which compelled the applicant to file the complaint which was dismissed. Hence, the present appeal.

3. It is contended by the learned counsel for the appellant that the learned Judicial Magistrate, Ist Class, Hisar (for short referred as – ‘trial Court’) has gravely erred in dismissing the complaint and acquitting the accused/respondent by holding that the appellant has failed to bring the evidence in support of its case whereas the presumption of Section 139 of the Negotiable Instrument Act (for short – ‘N.I.Act’) is rebuttable in nature, which can be rebutted even with the help of preponderance of probabilities arising from the material available on the file. It is also contended that the

appellant has placed on record ledger, Ex.P3, to show that an amount of Rs.27,20,157/- was outstanding against the respondent, however, the learned trial Court has misinterpreted the facts by holding that it is unbelievable that the respondent has merely issued a cheque of Rs.2,00,000/- in favour of the appellant whereas the huge amount is outstanding towards the respondent as per the ledger entry because the respondent has been purchasing the manufactured goods from the appellant and he had been making the part payments of the goods in regular course of business. As such, the view taken by the learned trial Court is not sustainable in the eyes of law which renders the impugned judgment to be wholly illegal, unjust and erroneous on the face of it and is liable to be set aside and the respondent/accused is liable to be convicted and sentenced appropriately in accordance with law.

4. Heard and meticulously perused the case file.

5. A perusal of the case file reveals that no infirmity or illegality can be found in the order of the trial court wherein the trial Court has examined the evidence in totality from all possible angles. In the cross-examination, the complainant has categorically deposed that bills are not bearing the receiving of purchaser or receiver which shows that bills have been prepared by the complainant himself. The bills Ex.P.10 to Ex.P.17 are not bearing the receiving of purchaser or receiver, neither bearing signature of the accused nor bearing the vehicle number through which the material was taken from the complainant to the accused.

6. Hon'ble Supreme Court in the case titled "***M/s Kumar Exports Vs. M/s Sharma Carpets***" ***reported as 2009(1) RCR (Civil) 453 (S.C.)*** has held that "*Complainant has not produced any account or stock register,*

maintained by him in course of his regular business or any acknowledgement for delivery of goods to establish that as a matter of fact woolen carpets were sold by him.”

7. However, in the present case also, the applicant has not produced any stock register or account, in order to show that amount in sum of Rs.27,20,157/- was outstanding against the respondent-accused. The applicant has placed on record ledger, wherein amount in sum of Rs.27,20,157/- has been shown as outstanding against the respondent-accused but it is not believable that such a huge amount is outstanding and accused-respondent merely issued a cheque in sum of Rs.2 lacs in favour of the complainant. The applicant has failed to mention that this was a merely part payment towards the amount of Rs.27,20,157/-. Therefore, presumption raised in favour of the complainant-applicant is rebutted.

8. Further, the applicant has not disclosed the date, month and year, when the debt become due towards the respondent-accused while in ***“G.Veeresham Vs. S.Shiva Shankar & another” reported as 2007(4) Civil Court Cases 532 (A.P.)*** it has been held that “when complainant does not place on record any material of lending money then it is sufficient to infer that accused is liable to rebut the presumption available in favour of the complainant - accused not guilty of offence u/s 138 of the Act.” As such, the learned trial Court has examined the present case in the light of relevant material and judgement before reaching its conclusion to acquit the accused/respondent. The learned counsel for the appellant has failed to produce or refer to any counter judgment in support of his contentions and to show any illegality or perversity in the judgment of the learned trial Court.

11. Resultantly, the present appeal sans merit and is hereby dismissed as such.

04.11.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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