

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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2024:PHHC:051877
CRM-A-975-2023 (O&M)
Date of decision: April 10th, 2024

M/s Everest Automobiles
.....Applicant

Versus

M/s Rajit Enterprises
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Varun Sharma, Advocate
for the applicant.

MANJARI NEHRU KAUL, J.

The applicant (hereinafter referred to as ‘complainant’) is impugning the judgment dated 05.05.2023 passed by learned Judicial Magistrate 1st Class, Rewari, whereby the respondent (hereinafter referred to as ‘accused’) was acquitted of the charges framed against him under Section 138 read with Section 142 of the Negotiable Instruments Act (hereinafter referred to as ‘the Act’) in complaint No.NI Act/952/2016.

2. As per the allegations outlined in the complaint in question, the complainant firm was dealing in Sonalika Tractors and had some business transactions with the accused firm, for which meticulous accounting records were maintained by the complainant firm. In consideration of delivery of tractors, the accused issued a cheque bearing No.000078 dated 17.10.2016 amounting to ₹13,67,612/- drawn on Bank of Baroda, Khairthal (Rajasthan). Upon presentation of the cheque by the complainant, it was returned vide return memo dated 18.10.2016 with the remarks ‘Insufficient Funds’. Subsequently, the complainant sent a legal notice

dated 15.11.2016 to the accused demanding payment, but to no avail. The learned trial Court, after examining the evidence and other material on record, acquitted the accused. The learned trial Court concluded that the complainant had failed to substantiate its case against the accused, as there was an absence of credible evidence demonstrating that the accused had issued the cheque in question to settle any legally enforceable debt or liability.

3. Learned counsel appearing for the complainant has reiterated the allegations outlined in the complaint in question. He has asserted that the complainant firm was engaged in the trading of Sonalika Tractors and, upon orders placed by the accused firm, it supplied two tractors amounting to ₹9,70,740/-. Additionally, remaining balance of ₹13,67,612/- inclusive of interest, was owed by the accused. It has been still further contended that the trial Court overlooked that the accused had admitted to his signatures on the cheque in question raising a presumption under Section 139 of the Act in favour of the complainant. Furthermore, it has been argued that the accused failed to rebut this presumption by way of any cogent evidence. Furthermore, the assertion of the defence that the cheque had been given as a security, which was in turn misused by the complainant, was not supported by any cogent evidence, which was ignored by the learned trial Court. It has also been emphasized by the learned counsel that the lack of any initiative by the accused in re-claiming the cheque or providing evidence of such a request, let alone pursuing action regarding the alleged misuse was also ignored by the learned trial Court. Learned counsel has vehemently argued that the trial Court has dismissed the complaint in question primarily only

on the purported failure of the complainant to prove a legally enforceable debt.

4. Learned counsel for the applicant also submitted that inadvertently invoices (Annexures A-1 and A-2) could not be produced during trial, for which his application under Section 391 Cr.P.C. ought to be allowed so he could lead additional evidence to prove these crucial documents with respect to the existence of a legally enforceable debt.

5. I have heard learned counsel for the applicant and perused the relevant material on record.

6. It is evident that the complainant failed to produce any documentary evidence, notably ledger accounts, tractor bills, or even delivery receipts, to substantiate the purchase of the tractors by the accused. The invoices, which would have been the most compelling evidence of a legally enforceable debt, were conspicuously absent. Additionally, the complainant did not even produce any account books containing sale entries by it or any acknowledgement of the purchase of the tractors.

7. Although the applicant has now, at a highly belated stage, sought to introduce additional evidence through an application under Section 391 Cr.P.C., its too late in the day for the applicant to wake up from his slumber; the complainant has failed to satisfy this Court and to justify as to why these documents were not produced during trial. This Court cannot condone such dilatory tactics, especially considering that the invoices were already in the possession of the complainant during trial and as to why there were not produced at the relevant time.

8. As a sequel to be the above, this Court has no hesitation in

affirming the findings recorded by the learned trial Court, whereby the complaint in question was dismissed on the ground that the complainant had failed to prove that the cheque in question had been issued for a valid consideration so as to discharge a legally enforceable debt.

9. The application for grant of leave to appeal stands dismissed.

April 10th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No