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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-516-2019 (O&M)
Reserved on : 01.07.2024
Date of decision: 30.07.2024

Rohit Jain **...Applicant**

Versus

M/s Kevin Power Solutions Ltd. and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Ms. Neha Sonawane, Advocate
for the applicant.

MANISHA BATRA, J.

1. The instant application has been filed by the applicant under Section 378(4) of Cr.P.C. seeking grant of leave to file appeal against the judgment of acquittal dated 08.10.2018, passed by the Judicial Magistrate First Class, Panipat in Criminal Complaint bearing CIS No. NACT-1465 of 2015, titled as Rohit Jain vs. M/s Kevin Power Solutions Ltd. and others, filed under Section 138 of Negotiable Instruments Act, 1881 *(for short 'the Act')*, whereby the complaint was dismissed.

2. For the sake of coherence and continuity, the parties shall be referred to hereinafter as per their original nomenclature as given before the trial Court.

3. Briefly stated, the facts of the case relevant for the purpose of disposal of the present application are that the complainant/applicant had filed the aforementioned complaint on the allegations that accused No. 2, while representing himself as partner of M/s Kevin International, a sister concern of respondent No. 1/company, had appointed the firm of the applicant as its

consignee agent for sale of his products in various districts of Haryana. A consignee agreement was executed by the firm of the applicant, respondent No. 1/company and M/s Kevin Interntional in this regard on 04.07.2013. In terms of the said agreement, the applicant deposited an amount of Rs. 35 Lakhs with accused No. 1/company and a sum of Rs. 15 Lakhs with its sister concern company. Goods were sent by accused No. 1/company to the applicant for sale. However, after sometime, the same were demanded back on the assurance to supply the material again. Since some of the goods were already sold, therefore, the unsold articles were returned to accused No. 1/company and accounts were settled, as per which, an amount of Rs. 50 Lakhs was found due to the complainant. To discharge their liability, accused No. 1 issued a cheque for a sum of Rs. 50 Lakhs in favour of the complainant. The said cheque was presented before the banker of the complainant but was dishonoured with the remarks 'funds insufficient'. The complainant sent statutory notice but the accused refused to receive the same and hence, the aforementioned complaint had been filed.

4. On considering the preliminary evidence produced on record, the trial Court passed an order, thereby issuing process as against the accused. The presence of accused No. 3 Navdeep Singh Chauhan could not be secured and he was declared a proclaimed person. Accused No. appeared in response to the notice and was admitted to bail. Notice of accusation was served upon him, to which, he pleaded not guilty and claimed trial.

5. To substantiate his case, the complainant examined two witnesses, besides placing reliance upon certain documentary evidence and after cross examining the witnesses by the accused, the evidence of the complainant was closed.

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6. Statement of accused No. 2 was recorded under Section 313 of Cr.P.C. separately, wherein he admitted that the complainant was appointed as consignee agent/stockiest of the products of accused No. 1/company but he denied any liability of accused No. 1. It was claimed that the cheque in question was issued from the account of accused No. 1 at the time of execution of agreement by way of security and further that the accounts between the parties were never settled as complainant did not return the goods. No defence evidence had been adduced.

7. On appreciating the evidence produced on record and considering the contentions as raised by both the sides, the trial Court observed that the complainant had failed to prove the liability of the accused to pay an amount of Rs. 50 Lakhs i.e. the amount of the cheque in question and dismissed the complaint, thereby acquitting the accused Nos. 1 and 2. Feeling aggrieved, the complainant has filed the instant application.

8. It is argued by learned counsel for the applicant-complainant that the impugned order of acquittal of accused and dismissal of the complaint, as filed by the applicant, is not sustainable in the eyes of law as while passing the same, the trial Court did not apply its judicial mind and based its findings on conjectures and surmises. The trial Court gravely erred in holding that the complainant could not prove that the cheque in question was issued in lieu of legally enforceable debt or liability, though there was ample evidence on record to prove so. The statutory presumptions, as enshrined under Sections 118 and 139 of the Act, were also not properly taken into consideration. The trial Court also failed to consider that it was for the accused to show as to under what circumstances, the cheque in question was issued in favour of the applicant and they had miserably failed to

prove so. She further argued that the cheque in question was admitted to have been issued from the account of respondent No. 1/company at the time of execution of agreement with the complainant. Since the issuance of cheque itself was proved, therefore, nothing else was required to be established by the applicant. With these broad submissions, it is urged that the impugned judgment of acquittal passed by the trial Court deserves to be set aside as it suffers from material illegalities and infirmities, the application deserves to be allowed and the applicant deserves to be granted leave to file appeal against the impugned judgment.

9. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

10. On a perusal of the findings as given by the trial Court, it is revealed that while dismissing the complaint, it was observed by the trial Court that the applicant did not disclose the details of the business transactions like date when the material was supplied to it, the value of the material, the quantity and value of the goods claimed to have been sold by the applicant and number and value of the goods/articles returned to the accused/company. It further observed that as per entries made in the ledger account Ex. C18 to C22, the outstanding liability of the respondent/accused towards the applicant was admittedly to the tune of Rs. 13,07,056/- and that being so, there was no reason for accused No. 1 to issue cheque to the tune of Rs. 50 Lakhs. The trial Court also observed that apparently it was a case of misuse of a blank signed cheque given by accused No. 1 to the applicant in the course of business and filling up of exorbitant amount of money arbitrarily by the applicant/complainant.

11. On going through the evidence produced on record as well as

findings recorded by the trial Court and after giving due deliberation to the contentions raised by the applicant, I am of the considered opinion that the findings as given by the trial Court warrant no interference and no ground for allowing the present application has been made out. Undoubtedly, it has been proved from the record that the cheque in question was issued by respondent No. 1/company. The claim of respondent No. 1 was that it was a blank signed cheque and had been missed by the complainant. This plea stood fortified from the admission made by CW-2 Satish, Manager of the firm of the applicant, to the effect that the outstanding liability of respondent No. 1 was to the tune of Rs.13,07,056/-. Therefore, it emerges that against the liability of Rs.13,07,056/-, a cheque for a sum of Rs. 50 Lakhs was claimed to have been issued by respondent No. 1. The well settled proposition of law in this context is that for proving the commission of offence under Section 138 of the Act, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation and if the drawer of the cheque pays a part or whole of the same between the period when the cheque is drawn and when it is encahsed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque. Reliance in this regard can be placed upon the observations made by Hon'ble Supreme Court in ***Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and another : 2023 (1) RCR (Criminal) 408***, wherein a cheque for a sum of Rs. 20 Lakhs was dishonoured due to insufficient funds, on presentation. The drawer i.e. respondent/accused had taken a plea that the cheques was given to the complainant as security and before presentation of the same, an amount of Rs.4,09,315/- had been paid. Hon'ble Supreme Court observed that when a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be indorsed on the cheque as prescribed in Section 56 of the Act. The cheque indorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is indorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted. However, since in that case, part payments had been made by the accused after the debt was incurred and before the cheques was encashed upon maturity, it was held that the sum of Rs. 20 Lakhs represented on the cheque was not the legally enforceable debt on the date of maturity and by observing that the accused could not be deemed to have been committed the offence under Section 138 of the Act when the cheque was dihonoured for insufficient funds, the complaint was held liable to be dismissed. The facts of this case are squarely applicable to the present case as in this case also, though on presentation of the cheque, the outstanding liability of respondent No. 1 towards the complainant was to the tune of Rs. 13,07,056/- only as per own admission of the applicant but the applicant presented the cheque to the tune of Rs. 50 Lakhs without making any indorsement on the cheque qua the amount of legally enforceable debt. Section 56 stipulates that if there is an indorsement on a negotiable instrument that a part of the sum mentioned in the cheque has been paid, then the instrument may be negotiated for the balance. Section 15 of the Act defines the phrase 'indorsement' as follows:

> "15. Indorsement.- When a maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the

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'indorse'."

12. Since in this case, as per own claim of the applicant and as per statement of accounts maintained by the applicant in the course of business of his firm, only an amount of Rs. 13,07,056/- was shown to be payable by respondent No. 1, the option available with the applicant was either to take a new cheque for the reduced amount or to make indorsement on the cheque acknowledging that a part payment was made according to the provisions of Section 56 of the Act but the same has not been done by the applicant. Therefore, on dishonouring of this unindorsed cheque on presentation, in my considered opinion, offence under Section 138 of the Act was not attracted since the cheque did not represent the legally enforceable debt at the time of encashment. In this regard, reliance can again be placed upon ***Dashrathbhai Trikambhai Patel's*** case (supra) as well as ***Joseph Sartho v. Gopinathan : (2008) 3 KLJ 784*** and ***Alliance Infrastrucutre Project Ltd. vs. Vinay Mittal : ILR (2010) III Delhi 459.***

13. In view of the discussion as made above, I find no illegality or infirmity in the impugned judgment passed by the trial Court, which is well reasoned, based upon correct appreciation of facts, applicable law and judicial precedents and needs no interference of this Court. Accordingly, the present application is dismissed.

30.07.2024 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes*

Whether reportable *Yes*