



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 07.02.2024

+

CRL.L.P. 67/2024 & CRL.M.A. 3875-3876/2024

MICROMAX INFORMATICS LIMITED

..... Petitioner

Through: Mr. Mudit Sharma, Mr. Parvez Khan,
Mr. Yash Dhyani and Ms. Neha
Yadav, Advocates.

Versus

M/S WAVE MOBILES

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 378(3) read with Section 482 Cr.P.C, the petitioner/applicant seeks leave to appeal against the judgment dated 08.12.2023 passed by learned MM, West District, Tis Hazari Court, Delhi in CC No.3284/2017, whereby the respondent has been acquitted.

2. The facts, as noted by the learned Trial Court are as under:-

“xxx

1.2 The accused is proprietorship firm and has approached the complainant for appointment as authorized service Centre for complainant company. The complainant company has entered into Agreement for authorized service Centre dated 1 0.09.20 1 4 with the accused through its proprietor. The accused was appointed as Authorized Service Centre for the complainant at Kannur, Kerala. In



pursuant to execution of agreement, the accused person through its proprietor has been placing orders for spare parts of various mobile phones of Micromax and the same has been supplied by the complainant. The accused used to return the defective spare parts so replaced in mobile phone of Micromax brand or otherwise used to make payment in lieu thereof. The accused has never raised any objection as to quality/quantity and non delivery of parts at any point of time. The complainant was maintaining a running account of transaction as per which there is outstanding balance of Rs 15,61,099.82 towards products supplied/delivered by the complainant company to accused person. The complainant company requested to the accused to clear the outstanding dues. In discharge of legal liability, the accused has issued cheque bearing no 889205 dated 22.03.2017 for Rs 15, 61, 100/- drawn on Syndicate bank, Civil Station, Kannur.

1.3 Upon the presentment of the said cheque was dishonoured with the remarks "Funds Insufficient" vide memo dated 24.03.2017

1.4 In light of the above, the complainant was constrained to issue legal notice dated 18.04.2017 calling upon the accused persons to pay amount of dishonored cheque within 15 days from receipt of legal notice. The accused has neither replied to the legal notice nor made payment within 15 days of receipt of notice. Thus the present complaint.

xxx”

3. In trial, the proprietor of the respondent/accused took the defence that he was running a service centre of the complainant and that at the time of start of the business in August, 2014 upon the demand of the complainant, he had handed over two blank signed cheques. The service centre was closed in August, 2015 and at that time, no debt or liability existed. Rather, the complainant owed him Rs.8 lacs. The subject cheque given towards security



was misused by the complainant. In his statement under Section 313 Cr.P.C, the respondent admitted his signatures.

4. The learned Trial Court noted that the condition precedent for filing of complaint i.e., issuance of cheque and its dishonour are not in dispute. Though, the respondent has denied receipt of demand notice, however the same was held to have been duly served by the trial court. The aforesaid would give rise to a presumption that the cheque was issued in discharge of legal liability. The onus therefore lies upon the respondent to establish the non-existence of any debt or legal liability. The applicant examined one *Ankit Aggarwal*, its legal manager to prove its case. He stated that he had joined the complainant company in the year 2018 and that he was never involved in any transaction done by the applicant with the respondent.

5. In support of its case, the applicant exhibited the agreement for authorized service centre (Ex.CW1/2), which was admitted by the respondent. As per the said agreement, the respondent was appointed as authorized service centre from 19.09.2014 to 31.03.2015. The applicant claimed that on the expiry of the aforesaid period, the parties continued the same arrangement with consent. However, the respondent has denied the same. Concededly, there is no further document placed on record which would establish that the agreement for authorized service centre was renewed after 31.03.2015.

6. In the trial, though applicant's witness stated that the invoices vide which the respondent had placed orders after March, 2015 were available, however the same were never produced. Further, no receipt/acknowledgment of supply/delivery of product was ever filed. The applicant had relied only on his statement of account, which was maintained



by the finance department. However, no one from the department was examined. The respondent examined himself as DW-1 and stated that vide emails dated 05.07.2014 and 12.08.2014, the applicant had demanded necessary documents and in response to the same, it had sent two cheques, which were given as security. The copies of emails were exhibited as Ex.DW1/A and DW1/B. A certificate under Section 65B of the Evidence Act was also filed. The impugned judgment records that the email dated 05.07.2014 stated that it was mandatory to send two signed blank cheques in the name of the applicant company. The said email was not denied by the applicant's witness in his cross examination. Thus, it can be concluded that the respondent was able to prove that two blank cheques were given at the time of entering into the agreement in the year 2014.

7. The respondent has been able to rebut the presumption under Section 139 of the NI Act, the standard of proof for doing that being preponderance of probabilities¹ and has thus raised a probable defence which has created doubt about the existence of a legally enforceable debt or liability. The onus thus shifted on the applicant to prove its case, which it failed to do.

8. A decision of acquittal, strengthens the presumption of innocence in favor of the accused. At the same time, the appellate court, while considering a leave to appeal, has a duty to satisfy itself if the view taken by the trial court is both possible and plausible. The principles guiding the Court in such situations has been succinctly delineated by Supreme Court in Anwar Ali & Anr. v. State of Himachal Pradesh² as under:-

“xxx

¹ Rangappa v. S. Mohan, (2010) 11 SCC 441

² (2020) 10 SCC 166



14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under: (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189])

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn.* [(1984) 4 SCC 635], *Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* [1992 Supp (2) SCC 312], *Triveni Rubber & Plastics v. CCE* [1994 Supp (3) SCC 665], *Gaya Din v. Hanuman Prasad* [(2001) 1 SCC 501], *Arulvelu [Arulvelu v. State, (2009) 10 SCC 206]* and *Gamini Bala Koteswara Rao v. State of A.P.* [(2009) 10 SCC 636]”

xxx”

9. In light of what has been noted above, this Court finds no ground to grant leave to appeal.
10. Resultantly, the leave petition alongwith pending applications is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 7, 2024/rd