$~7

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

\+ CRL.L.P. 16/2024, CRL.M.A. 418/2024 and CRL.M.A. 419/2024

PADMA POLYCHEM PVT LTD .....Petitioner

Through: Mr. Niteen Kumar Sinha, Ms. Rashmi Pandey, Mr. Chandan Kumar and Mr.S. Tiwari, Advocates

Versus

M/S SHILPI CABLE TECHNOLOGIES LTD AND ORS ....Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **25.07.2024**

1. By way of present petition/application, the petitioner seeks leave to appeal against the judgement of acquittal dated 25.08.2023 passed by learned Judicial Magistrate, NI Act-02, Tis Hazari Court, Delhi in Complaint Case No. 8311/2019 instituted under Section 138 of the Negotiable Instrument Act, 1881 and titled as "Padma Polychem Pvt Ltd. vs Shilpi Cable Technologies Ltd".

2. Facts, in a nutshell, are that the complainant claims itself to be a registered company engaged in the business of PVC resin and used to supply material to the respondent company. Respondent No. 2 to 4 being Directors of respondent No.1 company, were impleaded in their vicarious capacity. It was alleged that from 02.06.2017 to 06.06.2017, the petitioner company

supplied goods/material to respondent No. 1 worth Rs.29,13,123/- on credit basis against total 8 invoices. After making all the deductions and the payment received from the respondent company, the outstanding balance amount against the respondent company stood as Rs. 51,16,768/-. In discharge of their liability, the respondent No. 1 issued the cheques bearing Nos. 000109 dated 10.06.2017 for Rs. 14,48,074/-; 000110 dated 13.06.2017 for Rs. 14,60,640/-; 000111 dated 14.06.2017 for Rs.14,60,640/-and 000112 dated 17.06.2017 for Rs.7,30,320 drawn on HDFC Bank, KG Marg Branch, New Delhi to the petitioner. The subject cheques, when presented for encashment, were returned dishonoured with the remark 'payment stopped by the drawer'. A legal demand notice dated 26.08.2017 was issued to the respondents, and upon their failure to repay the amount under the subject cheques, the underlying complaint case under Section 138 NI Act came to be filed.

Apparently, on 07.12.2017 the AR of the petitioner made a statement before the trial court to drop respondent No. 4/*Sandeep Gupta* from the array of accused persons and accordingly respondent No. 4 was dropped. Further, as respondent No. 1 company was before the NCLT in insolvency proceedings, there has been a stay qua the proceedings against respondent No. 1. Resultantly, the notice was framed only against Respondent No. 2 and 3. Respondent No. 2 admitted his signatures on the cheques in question, however, he passed away during the pendency of the trial. Therefore, vide order dated 25.08.2023, the learned trial court directed that the matter may proceed only qua Respondent No. 3 and vide judgment dated 25.08.2023, respondent No. 3 was acquitted.

3. Learned counsel for the petitioner submits that acquittal of respondent No. 3 has resulted in grave miscarriage of justice. It is submitted that the trial court has fallen into error by disallowing the document merely on the basis that the same was not supported with Section 65 B of the Evidence Act. It is further stated that the trial court wrongly noted that the respondent No.3 was neither the signatory to the cheques in question nor he was the whole-time Director or Managing Director. In reply to this observation learned counsel submits that Respondent No. 3 was in fact the Managing Director of the respondent company and was also responsible for day-to-day affairs of the respondent company. In support of the said contention reliance is placed on Master Data Form no 1 of Ministry of Corporate Affairs ("MCA") dated 19.03.2015 with certain other documents. Lastly, it is contended that admission of signatures by the deceased Director and non-filing of the certificate under 65-B cannot be a solitary basis for rejecting the evidence.

4. I have heard learned counsel for the petitioner and have also perused the material placed on record.

5. Before proceeding to deal with the merits of the case, this Court deems it fruitful to restate the legal position regarding offences under Section 138 NI Act.

An offence under Section 138 NI Act is made out, when the conditions stipulated in the proviso to Section 138 are satisfied. The first condition is that the cheque, which has been drawn on an account maintained by the drawer, ought to be 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. The second condition is that the payee or the holder in due course of the cheque, as the case may be, must make a demand for the said money by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the bank regarding the dishonour of the cheque. The third condition states that there should be a failure on the part of the drawer of cheque to make the payment of the amount under the cheque to the payee or the holder in due course, as the case may be, within 15 days of the receipt of the said notice. When all these three conditions are fulfilled, then only an offence under Section 138 of the NI Act can be said to have been committed by the person issuing the cheque [Ref: <u>MSR Leathers v. S. Palaniappan & Anr</u>.[1], <u>Charanjit Pal Jindal v. L.N. Metalics</u>[2] and <u>N. Harihara Krishnan v. J. Thomas</u>[3].]

6. In the present case, the fact that the signature on the subject cheque belongs to respondent No. 2 and that the cheque was issued on behalf of the company is not disputed. Considering the above contention, the presumption that the said cheques were issued towards discharge of a legally recoverable liability arises by virtue of Section 118 (a) and Section 139 of the NI Act and the court presumes that the cheque was issued in discharge, in whole or in part, of any debt or their liability. Now, when the presumption is raised in the favour of the petitioner/complainant, it is duty of the respondent No. 3/accused to prove that he does not owe any liability towards the complainant.

7. The legal position as regards presumption raised under Section 139 read with Section 118 NI Act and its rebuttal has been succinctly put by the

[1] (2013) 1 SCC 177
[2] (2015) 15 SCC 768
[3] (2018) 13 SCC 663

Supreme Court in the case of Basalingappa *v.* Mudibasappa[4]. It was observed that:-

> *"xxx*
>
> *25. We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in following manner:*
>
> > *25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*
> >
> > *25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.*
> >
> > *25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.*
> >
> > *25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.*
> >
> > *25.5. It is not necessary for the accused to come in the witness box to support his defence.*
> >
> > *xxx"*

8. A perusal of record shows that the invoices by which the petitioner is imputing liability on the respondent No. 3 have not even been produced in original. The invoices attached are merely printouts of invoices bearing

---

[4] (2019) 5 SCC 418

neither the sign nor the stamp to prove its authenticity. Moreover, the reliance of petitioner on the print outs of bills/purchase orders alongwith the copy of its ledger, printout of GST forms and copy of printout of e-mail is misplaced as the above documents are not accompanied by the relevant certificate under Section 65B of Evidence Act and therefore are inadmissible in evidence. In this regard, learned Judicial Magistrate rightly relied upon a recent judgement of Supreme Court titled Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and others reported reported as **(2020) 7 SCC 1** and Samsung India Electronics Pvt Ltd vs MGR Enterprises and Others reported as **2019 SCC OnLine Del 8877.**

9. At the same time, learned Judicial Magistrate also observed that in the complaint it has been mentioned that accounts between the parties were settled and the respondent had cleared the outstanding balance. Further, during the cross examination of AR of the petitioner, he admitted that till June 2017, all payments were made. As observed by the trial court, it is not clear from the complaint as to how much amount was received in the month of June 2017. Therefore, a doubt has been created in the mind of the court from the deposition of the AR of the petitioner. It is also important to note that respondent No. 2 has neither been assigned any specific role in the complaint by the petitioner, nor he is the signatory as well as nothing has been placed on record to show him as the person in-charge of handling the day to day affairs of the respondent company. Therefore, it can be said that as the case of petitioner itself suffers from material irregularities, respondent No. 3 has rebutted the statutory presumptions and the onus shifts back on the complainant.

10. Further, a decision of acquittal strengthens the presumption of

innocence in the 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 appellate court should be slow in reversing an order of acquittal passed by the trial court.[5] The principle guiding the Court in such situations has been succinctly delineated by Supreme Court in Anwar Ali & Anr. *v.* State of Himachal Pradesh[6] in the following terms:-

> "*xxx*
> *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*"

11. In view of the aforesaid discussion, as observed by the trial court that the petitioner has failed to establish its case beyond reasonable doubt, this

---

[5] Jafarudheen & Ors. v. State of Kerala, (2022) 8 SCC 440,
[6] (2020) 10 SCC 166

Court finds no ground to grant leave to appeal. Consequently, the leave petition is dismissed alongwith the pending applications.

MANOJ KUMAR OHRI, J

JULY 25, 2024
ns