
(2010) 12 P&H CK 0514

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 690 MA of 2009

R.K. International

APPELLANT

Vs

Kapoor Traders and Another

RESPONDENT

Date of Decision: Dec. 2, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378(4)
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: Daya Chaudhary, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Daya Chaudhary, J.

Crl. Misc. No. 64842 of 2009

1. The present application is for condonation of delay 99 days in filing of the appeal.
2. The delay of 99 days is condoned for the reasons mentioned in the application.

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3. This application has been filed u/s 378(4) Code of Criminal Procedure for grant of leave to appeal against the judgment dated 8th June, 2009 passed by Judicial Magistrate Ist Class, Jalandhar.

4. Learned Counsel for the applicant submits that cheques were given by the Respondents as there were business dealing between them and invoices Exhibits C-1 to C-20 were received by the Respondents which were signed by Respondent No. 2 or his representative on his behalf. Learned Counsel for the applicant also submits that initially the burden to prove the cheques was on the applicant but later it was shifted on the Respondents to prove that the cheques were not for discharge

of any legally enforceable liability. Learned Counsel further submits that all requirement of Section 138 of the Negotiable Instrument Act (here-in-after referred to as "the Act") by leading oral as well as documentary evidence was fulfilled but the learned trial Court has not considered all these facts and has wrongly dismissed the complaint. Learned Counsel also submits that statement of accounts qua the account of Respondents maintained by the applicant shows that cheques in dispute were credited in the account of the applicant and moreover outstanding balance of statement of account also shows that Respondents were under the liability to pay the sum mentioned in the cheques in dispute but the learned trial Court has not considered this aspect while dismissing the complaint. Learned Counsel for the applicant also raised the contention that the cheques were given by the Respondents in business dealing and from the record available it is clear that the cheques in dispute were issued and the same were credited in the account of the applicant and all the ingredients of Section 138 of the Act were there which have not been considered by the trial Court.

5. Heard the learned Counsel for the applicant.

6. As per case of the complainant, an application u/s 138 of the Act was filed on 13th January, 2003. Respondent No. 2 was proprietor of Respondent No. 1 and has been purchasing goods on credit from the applicant. The applicant has been maintaining books of account in regular, usual and ordinary course of business in respect of the transactions made by the Respondents with the applicant and cheques bearing No. 084696 dated 25.5.2002 for a sum of Rs. 25,000/-, 084697 dated 10.6.2002 for a sum of Rs. 25,000/-, 084698 dated 25.6.2002 for a sum of Rs. 25,000/-, 084699 dated 10.7.2002 for a sum of Rs. 25,000/- and 084700 dated 30.7.2002 for a sum of Rs. 25,000/- drawn on Canara Bank, SSI Branch, Jalandhar were issued in discharge of their liability. The applicant presented the said cheques for encashment in the bank and the same were returned back unpaid vide Memo dated 22nd November, 2002 with the remarks "account closed" which was received by the applicant on 23rd November, 2002. A legal notice dated 3.12.2002 was sent through registered post to call upon the Respondents to make payment within the prescribed period of fifteen days but the Respondents failed to pay the same despite service and the complaint was filed on 13th January, 2003. Preliminary evidence was led and accused-Respondents were ordered to be summoned u/s 138 of the Act vide order dated 13.1.2003. Statements of complainant as well as witnesses were recorded and thereafter statements of accused u/s 313 Code of Criminal Procedure were also recorded.

7. The learned trial Court dismissed the complaint vide order dated 8th June, 2009 that the complainant had failed to produce books of account which were required to be maintained under the statutory rule and cheques were issued to discharge legal enforceable liability.

8. In the present case, it is the case of the complainant that accused-Respondents had purchased pig iron from the complainant through bills /invoices and to discharge partial liability towards the said purchases made by them, they had issued five cheques. It is clear even from the complaint that the goods were supplied to the accused-Respondents through invoices and the applicant failed to bring on record the original invoices. Moreover, the complainant has himself admitted that some of the invoices/bills do not bear the signatures of the accused or his representatives. It has further been stated that the statement of account Exhibit C-2 has been prepared from the photostat copy of the invoices. Complainant has totally failed to bring on record the original copies of the invoices/bills despite opportunities having been granted to him, although a plea was taken that the same are lying with the Chartered Account who was out of station but simultaneously he has also stated that the office of said Chartered Accountant was open. The applicant has also failed to bring on record the sale-tax books which could prove purchase of goods by the accused and no account books and stock registers were produced which could show that goods were actually sold to the accused-party and a liability was existed against the accused persons. In absence of any such record, an inference was taken against the complainant. The contention of the Respondents was believed by the trial Court that the cheques were issued by way of security and the complainant could not prove that the cheques in dispute were issued to discharge legally enforceable liability. This view has been supported by the judgment of Hon"ble the Apex Court in [Arun Kumar and Others Vs. Jeevad Khan and Others](#), as well as judgment in K. Prakashan v. P.K. Surenderan 2007 (4) CCC 371.

9. In view of the above, there is no merit in the contentions raised by the learned by the learned Counsel for the applicant and leave to appeal is declined.