

*Before K.C Puri, J*

**M/S MEHTA CREDIT @ LEASING COMPANY—Petitioner**

*versus*

**DEERAJ DUA—Respondent**

**CRA No. S. 1102- SBA of 2006**

April 23, 2013

***A. Negotiable Instrument Act, 1881 - S.138 - Indian Partnership Act, 1932 - S. 69 -Appeal against dismissal of Complaint - Complaint dismissed on account of Complainant-Firm not being registered - Section 69 Partnership Act not applicable to criminal proceedings - Section 69 of Partnership Act confined to the right arising out of the contract for instituting a Civil Suit and not applicable with respect to complaint under Section 138 of the 1881 Act - Appeal accepted***

*Held*, that the first ground for dismissing the complaint by the trial Court is that Ravi Mehta, who claimed himself to be partner of the firm M/s Mehta Credit & Leasing Company has not produced the evidence that M/s Mehta Credit & Leasing Company is a registered firm and Shri Ravi Mehta is one of its partners. This Court in authority

**M/s Capital Leasing and Finance Co. vs. Navrattan Jain reported in 2005 (4) RCR (Criminal) at page 330 in para No.27 held as under :-**

"27. In the case in hand the complainant has a statutory claim in terms of Section 138 N.I. Act. Even otherwise Section 69 of the Partnership Act is confined to enforcement of a right arising out of a contract by instituting a suit or other proceedings by an unregistered firm. The criminal complaint that has been filed cannot be treated as a suit or other proceedings to enforce any rights arising under a contract. Therefore, there is no bar to the criminal complaint that has been filed and the non-registration of the firm would not bar the prosecution of an accused on the ground that the firm was not registered."

(Para 9)

*Further held*, that from the bare reading of the said ruling it is revealed that Section 69 of the Partnership Act confined to the right arising out of the contract for instituting a civil suit and the said provision is not applicable in respect of complaint under Section 138 of the Act. So, the said finding of the trial Court stands set aside.

(Para 10)

***B. Negotiable Instruments Act, 1881 - Quantum of sentence - Code of Criminal Procedure 1973 - S. 357(3) - Compensation - Accused sentenced/directed to deposit compensation and fine and costs of litigation in default whereof to undergo six month R.I. - Imprisonment to serve no useful purpose - Complaint pending for the last 11 years -Appeal by Complainant accepted***

*Held*, that now reverting to the quantum of sentence. Authority M/s. Capital Leasing and Finance Co.'s case (supra) can be relied upon regarding quantum of sentence. In that case, there was dishonour of cheque of Rs.1,00,000/- and the matter relates to 12 years old and it was held that imprisonment will not serve useful purpose. Accused was sentenced to pay fine of Rs.5000/- and to pay Rs.1,00,000/- as compensation under Section 357(3) Cr.P.C. in the said case.

(Para 17)

*Further held*, that so, relying upon the ratio of the said judgment, the accused is sentenced to pay a sum of Rs.1,50,000/- to the complainant as compensation under Section 357(3) Cr.P.C. and accused is further directed Criminal Appeal No. S. 1102 SBA of 2006 7 to deposit Rs.50,000/- as fine and costs of litigation. The said amount be deposited within two months from today before the trial Court. On realization of the said amount Rs.1,50,000/- shall be paid to the complainant as compensation under Section 357(3) of the Cr.P.C. and remaining amount shall be considered as fine and costs of litigation. In default of payment of fine and compensation amount, referred to above, within two months from today, the accused-respondent shall undergo rigorous imprisonment for six months.

(Para 18)

Sandeep Kotla, *Advocate for the petitioner.*

Vivek Khatri, *Advocate for respondent.*

**K.C. PURI, J.**

(1) M/s Mchta Credit & Leasing Company-complainant has directed the present appeal against the judgment dated 23.12.2002 passed by Chief Judicial Magistrate, Hisar vide which the complaint preferred by the complainant-appellant was dismissed.

(2) The brief facts of the present case are that respondent-accused entered into pronote with the complainant on 10.5.2002 for taking finance with the terms and conditions mentioned in pronote. The accused thereafter issued a cheque dated 11.11.2003 for Rs.1,42,000/- drawn on Central Bank of India, Pundri in his account. The cheque in question has been duly presented to UCO Bank by the complainant within the prescribed period but Criminal Appeal No. S. 1102 SBA of 2006 2 the same was received unpaid for the reasons "refer to drawer". The complainant thereafter issued a demand for the said amount of Rs.1,42,000/- by giving registered legal notice dated 16.12.2003 and the said notice was duly sent within fifteen days of the receipt of information by the complainant from the bank regarding bouncing of the cheque in question. Despite that the accused-respondent failed to make the payment hence the complaint.

(3) After recording preliminary evidence, the trial Court ordered to summon the accused-respondent to stand trial under Section 138 of the Negotiable Instruments Act, (in short – the Act) vide order dated 10.3.2004.

(4) On appearance before the trial Court, the accused was served with notice of accusation under Section 138 of the Act vide order dated 20.10.2004. Thereafter, complainant examined Ravi Mehta as PW-1 and certain documents were tendered in the evidence.

(5) On closure of the evidence by the complainant, statement of accused under Section 313 Cr.P.C. was recorded and he denied the allegations mentioned in the complaint and pleaded his innocence.

(6) The trial Court after hearing the learned counsel for the parties dismissed the complaint and acquitted the accused from the charges levelled against him vide judgment dated 23.12.2002.

(7) Feeling dissatisfied with the aforesaid judgment dated 23.12.2002, the present appeal has been directed by the complainant.

(8) I have heard learned counsel for the parties and have gone through the records of the case with their able assistance. Criminal Appeal No. S. 1102 SBA of 2006.

(9) The first ground for dismissing the complaint by the trial Court is that Ravi Mehta, who claimed himself to be partner of the firm M/s Mehta Credit & Leasing Company has not produced the evidence that M/s Mehta Credit & Leasing Company is a registered firm and Shri Ravi Mehta is one of its partners. This Court in authority *M/s Capital Leasing and Finance Co. versus Navrattan Jain (1)* in para No.27 held as under :-

“27. In the case in hand the complainant has a statutory claim in terms of Section 138 N.I. Act. Even otherwise Section 69 of the Partnership Act is confined to enforcement of a right arising out a contract by instituting a suit or other proceedings by an unregistered firm. The criminal complaint that has been filed cannot be treated as a suit or other proceedings to enforce any rights arising under a contract. Therefore, there is no bar to the criminal complaint that has been filed and the nonregistration of the firm would not bar the prosecution of an accused on the ground that the firm was not registered.”

(10) From the bare reading of the said ruling it is revealed that Section 69 of the Partnership Act confined to the right arising out of the contract for instituting a civil suit and the said provision is not applicable in respect of complaint under Section 138 of the Act. So, the said finding of the trial Court stands set aside.

(11) The second reason given by the trial Court for dismissing the complaint is that pronote Ex. P-1 has not been proved in accordance with Criminal Appeal No. S. 1102 SBA of 2006 law. The learned trial Court has lost sight of the fact that claim of the complainant was not in respect of pronote Ex. P-1. The pronote Ex. P-1 has been produced simply to prove that there is a legal liability against the accused. The accused/respondent has not disputed the factum of signatures on the cheque in question but has taken a stand that said cheque was given to one Sandeep Kumar. There is a presumption under Sections 118 and 139 of the Negotiable Instruments Act that negotiable is for consideration unless contrary is proved. I am further fortified by authority laid down by Hon'ble Apex Court in *K. Bhaskaran versus Sankaran Vaidhyan Balan (2)* in this regard.

(12) The initial burden to prove the liability was upon the complainant and he has discharged his liability by making his statement and producing pronote Ex. P-1. The onus has shifted upon the accused that said cheque was not for consideration. No evidence has been led by the accused that the said cheque was without consideration.

(13) The learned trial Court has given much importance to the effect that body writing is in different ink and on that account it be presumed that it was a blank cheque. The other reasoning given by the trial Court is that Sandeep Kumar, who is a witness of the pronote has not been produced. These grounds for discarding the case of the complainant do not appeal to the reason. The Madras High Court in authority *P.S.A. Thomotharan versus Dalmia Cement (B) Ltd. (3)*, held that if the accused admitting his signatures on the cheque and the amount, it will not make any difference if body of the cheque was not in Criminal Appeal No. S. 1102 SBA of 2006 the handwriting of the accused. It was further laid down that there is no law which requires that body of the cheque should also be written

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(2) 1999 (4) RCR (Cr.) 309

(3) 2005 (1) RCR (Cr.) 1002

by the signatory of the cheque. It depends upon the circumstances of each case whether presumption under Section 118 and 139 of the Act should be drawn or not. In the present case, the notice has been stated to be issued to the accused before filing the complaint which has been proved as Ex.P5. The said notice was returned with the remarks refused by the accused. So, the said notice would be deemed to have been served upon the accused. The accused should not have refused legal notice when the same was sent by the appellent.

(14) So far as authority *Joseph versus Gladis Sasi (4)* relied upon by the counsel for the accused respondent is concerned there is no dispute to the said proposition of law that admission of signatory on blank cheque does not amount to admission of a cheque. However, the facts of that case are distinguishable as in that case cheque was thumb marked and the complainant has not proved the execution of said cheque in his presence. So, the aforesaid authority Joseph's case (supra) is distinguishable. Authority *Jose versus P.C. Joy (5)* is distinguishable as in that case, the complainant has entered his name without instructions from the accused. There is no such averments in the present case.

(15) No doubt before the trial Court, during the course of arguments accused has taken a stand that cheque was issued in favour of Sandeep Kumar but from the close scrutiny of the statement of accused under Section Criminal Appeal No. S. 1102 SBA of 2006 313 of the Cr.P.C., the accused has not taken a stand that cheque was issued in favour of Sandeep Kumar. So, the trial Court has travelled beyond the case of the accused. The accused has simply denied the assertions made against him. No specific stand has been taken by him during the course of trial or in his statement recorded under Section 313 of the Cr.P.C.

(16) Much weight has been given for not producing Sandeep Kumar. The case of the accused was that cheque was issued in favour of Sandeep Kumar. The accused could have produced Sandeep Kumar to disprove the case of the complainant that cheque was issued in favour of Sandeep Kumar and not in favour of the complainant. The complainant has produced the pronote and legal notice and no rebuttal evidence has been

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(4) 2011 (1) RCR (Civil) 298

(5) 2008 (4) RCR (CrI) 251

produced by the accused. So, in these circumstances, the appeal is accepted. The judgment of the trial Court stands set aside. The accused stands convicted under Section 138 of the Negotiable Instruments Act.

(17) Now reverting to the quantum of sentence. Authority *M/s Capital Leasing and Finance Co.'s case (supra)* can be relied upon regarding quantum of sentence. In that case, there was dishonour of cheque of Rs.1,00,000/- and the matter relates to 12 years old and it was held that imprisonment will not serve useful purpose. Accused was sentenced to pay fine of Rs.5000/- and to pay Rs.1,00,000/- as compensation under Section 357(3) Cr.P.C. in the said case.

(18) So, relying upon the ratio of the said judgment, the accused is sentenced to pay a sum of Rs.1,50,000/- to the complainant as compensation under Section 357(3) Cr.P.C. and accused is further directed Criminal Appeal No. S. 1102 SBA of 2006 to deposit Rs.50,000/- as fine and costs of litigation. The said amount be deposited within two months from today before the trial Court. On realization of the said amount Rs.1,50,000/- shall be paid to the complainant as compensation under Section 357(3) of the Cr.P.C. and remaining amount shall be considered as fine and costs of litigation. In default of payment of fine and compensation amount, referred to above, within two months from today, the accused respondent shall undergo rigorous imprisonment for six months.

(19) A copy of this judgment be sent to the trial Court for strict compliance.

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*S. Gupta*