(2019) 11 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 1408, 1410, 1635 Of 2019

Aashutosh International Pvt. Ltd. APPELLANT

Vs

Punia Alloys Pvt. Ltd. And Others RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 378(4)
Negotiable Instruments Act, 1881 — Section 138, 141

Citation : (2019) 11 P&H CK 0054

Hon'ble Judges : Harnaresh Singh Gill, J

Bench : Single Bench

Advocate : Arvind Kashyap

Final Decision : Dismissed

Judgement

Harnaresh Singh Gill, J

This order shall dispose of the above noted three applications under Section 378(4) Cr.P.C. seeking special leave to appeal against the judgments dated 6.4.2019 passed by the learned Sub Divisional Judicial Magistrate, Amloh, whereby while acquitting respondent No.3-Nishan Singh, the other accused i.e. Sanjay Shinde, has been convicted of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act') and sentenced to undergo RI for 2 years and to pay compensation of various amounts to the complainant.

In the complaints filed by the complainants under Section 138 of the Act, accused-Sanjay Shinde and Nishan Singh (respondent No.3 herein) had been ordered to be summoned for the offence under Section 138 of the Act. The said complaints were filed, inter-alia, with the allegations that accused No.2 and 3 (Sanjay Shinde and Nishan Singh) being director of accused No.1-Company had visited the premises of the complainant-Company and assured the complainant that the cheques issued by accused No.1-Company would be encashed whenever presented in the Bank; that the business dealings had started between the complainant-Company and the accused-Company; that in discharge of the said legal liability, accused No.1-Sanjay Shinde had issued three cheques for Rs.6,00,000/-, Rs.5,50,000/- and 5,95,000/- drawn on HDFC Bank branch Mandi Gobindgarh, but the same got dishonoured when presented to the Bank with the remarks `Funds Insufficient'.

On the basis of the preliminary evidence led, the accused were summoned to face the trial and on appearance they were served with the notice of accusation to which they pleaded not guilty and claimed trial.

In the post charge evidence, the complainant-Company had examined its Sales Executive Mukesh Bansal as CW1 and Suraj Arora, CSO, HDFC Bank as CW2 besides leading documentary evidence Exs.C1 to C.12 Statements of the accused under Section 313 Cr.P.C. were recorded. They denied the incriminating circumstances appearing against them and pleaded false implication. In evidence, they examined DW1-Singhasan Rai, clerk at the office of ROC, Chandigarh, who proved the record of DIR-12 (Exs.D1 and D2) relating to the accused-Company.

On the basis of the evidence led and after taking into consideration the rival contentions, the learned trial Court came to the conclusion that the complainant could only prove its case against accused-Sanjay Shinde, whereas no case was made out against respondent No.3-Nishan Singh, and accordingly, he was acquitted of the charge framed against him.

I have heard the learned counsel for the applicant and do not find any merit in the present petitions.

Learned counsel appearing for the applicant states that once it stood proved on record that respondent No.3-Nishan Singh was the Director of the accused-Company at the relevant point of time, nothing further was required to fasten the liability on him. It is further submitted that at the time of issuance of the cheques in question, as respondent No.3 had been the Director of the accused-Company, he is presumed to have incurred a liability for and on behalf of the accused-Company. It is further submitted that while passing the impugned judgments, the learned trial Court has committed patent illegally when it held that the complainant could not prove on record that respondent-Nishan Singh was also responsible for the day to day affairs of the Company.

The learned trial Court while passing the impugned judgments found that merely being a Director of the accused-Company in the absence of various other facts as noticed therein, would not make a person liable. It was held to the following effect:-

"Merely because being a director of the company in the absence of above said factors will not make the person liable. Also, bald averments made in the complaint that accused No.3 Nishan Singh was director and responsible for the conduct of the day to day business of the company is not sufficient to prove

"Vicarious Liability". It is incumbent upon the complainant to spell out the role of each and every director, if he is not Managing Director or Joint Managing Director or is signatory of the company and to explain how he being director was in charge and responsible for the conduct of day to day business of the Company.

In the instant case except the reproduction of the language under Section 141 of the Negotiable Instruments Act in the complaint as well as in the affidavit, there is nothing on record to show how the accused No. 3 Nishan Singh was director and responsible for the conduct of the company in existence. In the absence of the same, it cannot be termed that accused No. 3 Nishan Singh is "vicariously liable" for the offence under Section 141 of the Negotiable Instruments Act.

In view of the above discussion as well as evidence brought on record, the accused No. 3 Nishan Singh had been able to rebut the presumption which lies in favour of the complainant under Section 141 of the Act. The case of the complainant has not been proved beyond shadow of reasonable doubt as the complainant has not been able to prove on record that accused No. 3 Nishan Singh facing trial had issued the cheque in question while being director and responsible person of accused No.1 Punia Alloys Pvt. Limited, in order to discharge his liability of the complainant."

Still further, while relying upon the judgment of this Court in Anil Chanana and another Vs. M/s Gyani Ram Ruliya Ram and another, 2019(1) RCR (Criminal) 389, it was rightly held by the trial Court that in the absence of "Form-32" and "Annual Returns", criminal liability upon respondent-Nishan Singh, could not be fastened.

It is not a case where the interests of the complainant-applicant were not secured while passing the impugned judgment. The sole grievance of the applicant is that respondent No.3-Nishan Singh, should also have been fastened with the liability and he ought to have incurred the conviction and sentence, as was imposed upon other accused - Sanjay Shinde.

However, I find that the learned trial Court has rightly held that the complainant could not prove its case against respondent-Nishan Singh. Admittedly, the cheques in question were signed by accused-Sanjay Shinde. The complaint of the complainant qua Sanjay Shinde stands allowed. Though the complainant had alleged in its complaint that respondent-Nishan Singh had visited their premises and had promised for encashment of the cheques, yet no evidence of the kind was led, which could establish such visit and thereby could pave the way for incurring vicarious liability by respondent-Nishan Singh.

It could not be pointed out that the learned trial Court has misread or misinterpreted the evidence while passing the impugned judgments. Still further, I do not find any perversity or illegality in the impugned judgments, which may warrant interference by this Court in the present application.

No other point has been raised.

In view of the above, all the three applications are dismissed. Leave to appeal is declined.

