(2023) 10 BOM CK 0063

In the Bombay High Court

Case No : Criminal Appeal No.1132 Of 2008

Arihant Engineers APPELLANT

Vs

Hirakani Milk And Milk Products And Others RESPONDENT

Date of Decision : 27-10-2023

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2023) 10 BOM CK 0063

Hon'ble Judges : R.N.Laddha, J

Bench : Single Bench

Advocate : Rahul Vijaymane, SA Rajeshirke, Tukaram Shendge, HJ Dedhia

Final Decision : Dismissed

Judgement

R.N.Laddha, J

1. The legality, propriety and correctness of the Judgment and Order dated 29.06.2007, passed by the learned Judicial Magistrate First Class, Pimpri, in CC No.4946 of 2004, whereby the accused/respondents No.1 and 2 came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1981 (for short ‘the Act’), is assailed in this Appeal.

2. Respondent No.1 (original accused No.1) is a proprietary firm of which respondent No.2 (original accused No.2) is the proprietor. The Appellant (original complainant) is also a proprietary firm that supplies dairy equipment. The accused/respondent No.2 placed a purchase order with the appellant/ complainant firm for a complete set of dairy equipment required for milk products, with a total cost of Rs.10,25,000/- with the condition that 90% of the total amount was required to be paid by the accused at the time of taking out equipment from the manufacturing plant of the complainant, and the remaining 10% was to be paid on commissioning of the equipment in the accused firm. The accused then accepted and confirmed the order. As per the purchase order, the

complainant manufactured the dairy equipment and delivered it to the accused firm.

3. For the payment of the cost of this equipment, accused No.2 issued a cheque bearing No.450382 dated 14.6.2004 for Rs.4,95,000/- drawn on the Mahad Co-operative Urban Bank Limited in favour of the complainant. The cheque was deposited by the complainant in Janaseva Sahakari Bank Limited, Bhosari, MIDC Branch, Pune, on 17.06.2004. It returned unpaid on 05.07.2004 for the reason "not arranged for". This fact was intimated to the complainant on `24. 07.2004 by his banker. The complainant sent a notice on 31. 07.2004 to the accused by registered post AD and UPC demanding the payment of the cheque amount. However, the accused/respondents No.1 and 2 refused to accept the notice and they did not pay the cheque amount. Therefore, the complainant was constrained to lodge the complaint for the offence punishable under Section 138 of the Act.

4. The Learned Magistrate took cognizance of the offence and summoned the accused. On the appearance of the accused, the particulars of the offence were read over and explained to him. The accused abjured the guilt and claimed for trial.

5. During the course of the trial, the learned Magistrate recorded the evidence of Subhash Dhonde (PW1), the proprietor of the complainant firm; and Vilas Landge (PW2), Manager of Janaseva Bank. A number of documents were also tendered on behalf of the complainant. The statement of the accused under Section 313 of the Cr.P.C. came to be recorded. The accused, in his defence, examined a witness, Atmaram Soundalgikar (DW 1), who signed the agreement executed between the complainant and the accused as a witness. He relied on the agreement (Exh.64) executed between the complainant and the accused.

6. After appraisal of the evidence and the documents tendered for his perusal, the learned Magistrate was persuaded to acquit the accused. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the complainant has preferred this Appeal.

7. I have heard the learned Counsel for the appellant, Mr Rahul Vijaymane; Mr Tukaram Shendge, the learned Counsel appearing on behalf of respondents No.1 and 2; and Mr HJ Dedhia, learned Additional Public Prosecutor for respondent/ State. Perused the impugned judgment, grounds in appeal memo, evidence and material on record.

8. The cross-examination of the complainant shows that the cheque amount exceeded the outstanding amount. The complainant stated that it was subsequently decided in the agreement that 90% of the amount would be paid at the time of dispatching machinery from his premises. However, this agreement was not placed on record.

9. The evidence of the complainant further revealed that the total cost agreed between the complainant and the accused for dairy equipment was

Rs.10,25,000/-. The invoice (Exh.42) also establishes this fact. It is not in dispute that Rs.7,40,000/-was paid by the accused to the complainant, and only Rs.2,85,000/- was due from the accused. The cheque (Exh.39) is Rs.4,95,000/- which is more than the outstanding amount from the accused. The complainant admitted this fact in his cross-examination.

10. Furthermore, the complainant admitted in his cross-examination that he visited Sawant Engineering Mills with the accused, and the accused wanted to purchase a diesel engine from them. The complainant had not led any documentary evidence to prove the condition of payment of 90% of the amount. As per the agreement (Exh.64) proved by DW 1 and admitted by the complainant in his cross-examination, it is clear that they agreed to the terms that the complainant should provide machinery as per the quotation (Exh.38). In the quotation, there is no condition to show that the 90% amount is to be paid while dispatching the machinery.

11. According to DW 1, Atmaram Yashwant Sawdalgikar, the remaining amount of Rs.2,85,000/- was to be paid after the installation of machinery. However, as of now, the machinery has not been installed. His evidence established that he was a witness to the transaction between the complainant and the accused and that Rs.2,85,000/- was only due to the accused.

12. The proforma invoice (Exh.42) also indicates that the total amount is Rs.10,25,000/-. Although there is a sales tax column in this proforma invoice, there is no reference to Sales Tax. As per the letter (Exh.43), the complainant provided details of the outstanding amount. According to this letter, the sales tax amount was Rs.1,58,875/- and interest was Rs. 1,10,000/-. Based on this letter, it appears that including the bill amount of Rs.10,25,000/-, sales tax of Rs.1,58,875/- and interest amount of Rs.1,10,000/-, the total outstanding amount was Rs.12,93,875/- and out of which the complainant had received the payment of Rs.7,40,000/-. As per this letter, an amount of Rs.5,53,875/- was due and payable by the accused to the complainant. The cheque amount is more than the outstanding amount, and therefore, in such circumstances, the learned trial Court has rightly drawn an inference against the complainant that the said cheque was not issued for payment of the cost of dairy equipment.

13. The complainant’s case is not substantiated by documentary evidence. The total amount due of Rs.12,93,875/- could not be proven by any bill on record. The complainant’s admission during cross-examination that the cheque amount exceeded the outstanding amount was also to be taken into consideration. Given the circumstances, the observations of the Magistrate cannot be considered erroneous, especially when there is no documentary evidence and the admissions were elicited during cross-examination.

14. As a result, this appeal fails and is dismissed accordingly.

