(2013) 02 P&H CK 0215

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. A-862-MA of 2012 (O and M)

Malwa Cotton Spinning Mills Limited APPELLANT

Vs

Jagminder Singh RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 378(4), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 4 BC 87 : (2013) 3 Crimes 25 : (2013) 2 RCR(Civil) 648 : (2013) 2 RCR(Criminal) 572

Hon'ble Judges : Naresh Kumar Sanghi, J

Bench : Single Bench

Advocate : Akshay Bhan, for the Appellant;

Judgement

Naresh Kumar Sanghi, J.

Criminal Misc. No. 64259 of 2012

In view of the averments made in the application which is supported by an affidavit, the delay of 68 days in filing Criminal Misc. No. A-862-MA of 2012 is condoned.

Criminal Misc. No. A-862-MA of 2012

1. Prayer in this application filed u/s 378(4) of the Code of Criminal Procedure, 1973, is for grant of special leave to appeal against the judgment dated 30.05.2012 passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby respondent-accused-Jagminder Singh was acquitted of the charge u/s 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act"). Concisely, the facts of the case are that the applicant/complainant is a registered company under the Companies Act, having its registered office at Ludhiana, and deals in manufacturing of yarn. M/s. Samsung Acrycot Limited (accused No. 1 in the complaint) had purchased yarn from the applicant/complainant on credit and in order to discharge the legal liability, Mr. Tarlocahn Singh, Managing

Director(accused No. 2 in the complaint) in consultation and in connivance with accused Nos. 3 to 6 in the complaint, had issued a cheque bearing No. 143461 dated 27.12.2000 for a sum of Rs. 10,00,000/- drawn on the Punjab National Bank, Phave-V, S.A.S. Nagar, Mohali, in favour of the applicant/complainant with the assurance that the said cheque would be honoured on its presentation. That cheque was signed by Mr. Tarlochan Singh being the Managing Director of M/s. Samsung Acrycot Limited. On presentation, the cheque bounced and hence, the notice as required u/s 138 of the Act were issued to the accused persons to make the payment mentioned in the cheque within 15 days but the accused failed to make the payment, therefore, the complaint was presented before the learned Area Judicial Magistrate. After completion of preliminary evidence, the summoning order of the petitioner and his co-accused was passed.

2. During trial, accused No. 3-Jatinderpal Singh and accused No. 4-Bhupinder Singh were given up by the complainant whereas, accused No. 2 Tarlochan Singh and accused No. 5-Virsa Singh Sidhu did not appear despite service, therefore, vide order dated 07.12.2002 and 10.12.2000, they were declared as proclaimed offenders.

3. Respondent/accused No. 6-Jagminder Singh did appear before the court below and faced trial. He pleaded that he had resigned from the post of Director of accused No. 1 in the year 1996. In support thereof, he also produced the certified copy of Form No. 32 issued by the Registrar of the Companies. He further pleaded that the cheque was not signed by him and it was nowhere mentioned in the complaint nor was it proved by the complainant that respondent/accused-Jag-minder Singh was responsible for day-to-day affairs of the accused company - M/s. Samsung Acrycot Limited.

4. The learned trial court observed as under:-

At the very outset, it would be apt to mention that there is no specific role attributed to the accused, in the complaint as well as the evidence of the complainant. It has been averred in the complaint as well as the affidavit of the complainant, tendered in his evidence, that accused No. 2 is the Managing Director, whereas, the other accused are the Professional Directors of the accused company. It is not clear as to what role is attributed to the directors, who have been designated as Professional Directors of the accused company. The complainant has no where mentioned as to how and in what manner the accused Jagminder Singh is responsible for the conduct of the business of the accused company. Further, in para No. 5 of the complaint, it has been averred that the cheque in question has been issued by accused No. 2, in connivance and consultation of the accused Nos. 3 to 6. Even this averment in the complaint is not sufficient to draw a conclusion that these accused had any specific role to play in the day-to-day affairs of the business of accused company. It has been held by Hon''ble Supreme Court of India in the case titled as Anita Malhotra Vs. Apparel Export Promotion Council and Another, that in case of prosecution of Directors of a Company, complaint should specifically spell out how and in what manner the director was in charge of and responsible to the accused-company for the conduct of its business and a mere bald statement that he or she was in charge or and responsible to the company for the conduct of its business, is not sufficient.

5. With regard to Form No. 32 issued by the Registrar of Companies, learned trial court held as under:-

Further, the plea taken by the accused in the present case is that he had already resigned from the directorship of the accused company w.e.f. 31.12.1996. In order to substantiate his case, the accused has placed reliance primarily on certified copy of Form No. 32, which show that the accused had in fact resigned from the accused company in the year 1996. Learned counsel for the complainant has contested the mode of proof of the Form No. 32, submitting that the accused should have summoned the concerned person from the office of Registrar of Companies, in order to prove said document. Reliance has also been placed on the case law cited as Manoj Jalan v. State of West Bengal 2011 (7) R.C.R. (Criminal) 1008, in support of this argument. However, a careful reading of the ibid authority reveals that the opinion has been expressed by Hon''ble High Court only for the purpose of quashing proceedings u/s 482, Cr.P.C. Even in the concluding para of this judgment that a complaint cannot be quashed on this ground that the petitioners had submitted Form 32. The matter has to be decided by the trial court on the basis of the evidence. It has no-where been stated that certified copy of Form No. 32 is not admissible in evidence. In my opinion, the document has been sufficiently proved as per the provisions of the Indian Evidence Act. The document has been prepared by a Govt. body and has been duly certified by Registrar of Companies. I am supported in my view by the law laid down in the case cited as Dr. (Mrs.) Sarla Kumar Vs. Srei International Finance Ltd., , wherein it has been held that certified copy of Form 32, issued by the Registrar of Companies, is a conclusive proof that the petitioner had resigned from the company.

6. In view of the above, this Court is of the considered opinion that the judgment of acquittal of the respondent-accused, Jagminder Singh, passed by the learned trial court is well based and as such, no interference is called for by this Court. Resultantly, the application for grant of special leave to appeal sans merit and is hereby dismissed.

