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IN THE SUPREME COURT OF INDIA REPORTABLE
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1941 OF 2013
(@ Special Leave Petition(Crl) No. 1327 of 2011)

LAFARGE AGGREGATES & CONCRETE
INDIA P.LD Appellant

VERSUS

SUKARSH AZAD & ANR Respondents

WITH
CRIMINAL APPEAL NO. 1942 OF 2013
(@ Special Leave Petition(Crl) No. 1145 of 2012)

O R D E R

1. Leave granted.
2. The appellant herein has challenged the order passed by the High Court whereby it has allowed the petition filed by the respondents herein, who are the Directors in a company known as M/s. Ria Constructions Ltd. and was pleased to quash the complaint lodged by the appellant as also all consequential proceedings pending before the Magistrate in regard to the complaint lodged by the appellant for an offence under Section 138 of the Negotiable Instruments Act, 1881.
3. Admittedly, the accused no. 2 in the complaint had issued the cheque in favour of the appellant for a sum of Rs.2,50,000/-, which was dishonoured as there was instruction of 'stop payment' by the Managing Director. This led to the lodgment of a complaint at the instance of the petitioner in which proceedings started.
4. At this stage, the respondents herein filed a petition under Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) praying for quashing of the complaint and all consequential proceeding wherein the respondents had offered to tender the cheque amount of Rs.2,50,000/- to the appellant who had lodged the complaint alleging that the stop payment instructions by the respondents was illegal which made the offence triable in a summary procedure before the Magistrate. As already stated, the respondents offered to pay the cheque amount of Rs.2,50,000/- which had been dishonoured due to instructions of stop payment.
5. The High Court allowed the petition filed by the respondents herein for quashing of the proceeding but the said order was passed ex-parte. The appellant, therefore, filed an application for recall of the said order but the High Court dismissed the application for recall on the ground that the averments in the complaint did not meet the test laid down by this Court in the matter of N.K. Wahi Vs. Shekhar Singh and others, 2007 (9) SCC 481. It is this order which is under challenge in this special leave petition at the instance of the appellant-complainant.
6. We have heard counsel for the appellant as also the respondents and taking an overall view of the matter, we are of the opinion that this appeal is not fit to be entertained against rejection of the application for recall of the order by which the proceedings against the respondents herein had been quashed by the High Court. Nevertheless, we are conscious of the fact that the appellant should not be deprived of the amount for which the respondents had stopped payment which led to the lodgment of the complaint. We, therefore, suggested to the respondents that they

should honour the cheque which had been issued by them by making the payment along with the interest, which would be in the nature of compensation for stop payment instructions at their instance and that amount by way of lump sum amount including interest and compensation would be around Rs.5 lakhs.

7. The respondents have agreed to pay the said amount but the appellant has refused to accept the payment and insisted that the appeal against rejection of the recall application should be allowed by this Court. Counsel for the appellant submitted that merely because the accused has offered to make the payment at a later stage, the same cannot compel the complainant-appellant to accept it and the complainant-appellant would be justified in pursuing the complaint which was lodged under the Negotiable Instruments Act, 1881. In support of his submission, counsel for the Appellant also relied on a citation of Rajneesh Aggarwal Vs. Amit J. Bhalla (2001) 1 SCC 631.

8. However, we do not feel persuaded to accept this submission as the appellant has to apprise himself that the primary object and reason of the Negotiable Instruments Act, 1881, is not merely penal in nature but is to maintain the efficiency and value of a negotiable instrument by making the accused honour the negotiable instrument and paying the amount for which the instrument had been executed.

9. The object of bringing Sections 138 to 142 of the Negotiable Instruments Act on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business of negotiable instruments. Despite several remedy, Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Therefore, once a cheque is drawn by a person of an account maintained by him for payment of any amount or discharge of liability or debt or is returned by a bank with endorsement like (I) refer to drawer (ii) exceeds arrangements and (iii) instruction for stop payment and like other usual endorsement, it amounts to dishonour within the meaning of Section 138 of the Act. Therefore, even after issuance of notice if the payee or holder does not make the payment within the stipulated period, the statutory presumption would be of dishonest intention exposing to criminal liability.

10. But in the instant case, the negotiable instrument which admittedly is a cheque was issued by respondent no. 2 who is the managing director and the contesting respondents herein against whom the proceedings have been quashed are not the director of the company in a statutory capacity and, therefore, the payments towards cheque in any case could not have been made by them and it was respondent no. 2 who was liable to honour the cheque. Nevertheless, the respondents offered to make the payment to the appellant/complainant, yet the appellant refused to accept the payment and pursued the complaint which was quashed by the High Court on which date the appellant had failed to appear without sufficient cause. Thereafter, if the High Court refused to recall that order, we do not consider that there were sufficient grounds necessarily to recall the order quashing the complaint.

11. However, in the interest of equity, justice and fairplay, we deem it appropriate to direct the respondents to make the payment to the appellant by issuing a demand draft in their favour for a sum of Rs.5 lakhs, which would be treated as an overall amount including interest and compensation towards the cheque for which stop payment instructions had been issued. If the same is not acceptable to the appellant, it is their choice but that would not allow them to prosecute the respondents herein in pursuance to the complaint which they have lodged implicating these two respondents.

12. Besides this, the appellant also ought to take note of the fact that these appeals are not directed against the order by which the complaint had been quashed insofar as these two respondents are concerned but it is directed against the order of the High Court by which it refused to recall the order by which the complaint had been quashed. The appellant had failed to offer any sufficient cause for

their non-appearance on the date when the complaint had been quashed and if we were to be driven to merely taking a technical view of the matter, these appeals could have been rejected even on the ground of non-sufficiency of material furnished by the appellant in the High Court against refusal to recall the order in which case the petitioner cannot realise even the amount towards the cheque issued in their favour. But considering the fact that the appellant would be deprived of their due amount of Rs.2,50,000/-, we delved into the factual details and considered just and appropriate to direct the respondents to make the payment for the sake of substantial justice to the complainant-appellant as also in view of the analogous appeal, arising out of SLP(Crl)No. 1145/ 2012 directed against the order dated 10th September, 2010 passed in Crl.Misc.No.20203 of 2010 whereby the High Court had allowed the petition filed by the respondents herein under Section 482 of the Code of Criminal Procedure, 1973 and was pleased to quash the proceedings against them. It was in this context that we thought it appropriate to direct the respondents to make the payment towards the cheque in which stop payment instructions had been issued. Besides this, the appeal is time barred by 359 days for which also we see no justification. On the one hand, the appellant has sought to impress upon this Court to take a technical view of the matter by urging that the respondents had not made the payment during the 15 days notice period, even though that had been offered at a later stage, but ignoring his own conduct he expects this Court to condone the huge delay of 359 days in filing the appeal, which is fit to be rejected outright.

13. Hence, appeal arising out SLP(Crl) No. 1327 of 2011 is dismissed on merit and appeal arising out of SLP(Crl) No. 1145 of 2012 is dismissed on the ground of delay as also on merits subject to the direction of payment to the appellant by the respondents.

.....J.
(GYAN SUDHA MISRA)

.....J.
(PINAKI CHANDRA GHOSE)

NEW DELHI
SEPTEMBER 10, 2013

ITEM NO.9 COURT NO.12 SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).1327/2011

(From the judgement and order dated 09/11/2010 in CRLM No.20203/ 2010, CRM No.55019/2010 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

LAFARGE AGGREGATES & CONCRETE INDIA P.LD Petitioner(s)

VERSUS

SUKARSH AZAD & ANR Respondent(s)

(With appln(s) for stay and office report)(For final disposal)

WITH SLP(Crl) NO. 1145 of 2012
(With appln(s) for c/delay in filing SLP and office report)
(For final disposal)

Date: 10/09/2013 These Petitions were called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE GYAN SUDHA MISRA
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Petitioner(s) Mr. Ajay Bhargava, Adv.
Ms. Vanita Bhargava, Adv.
Mr. Nitin Mishra, Adv.
Mr. Abhijeet Swaroop, Adv.
M/S. Khaitan & Co.

For Respondent(s) Mr. Sudhir Walia, Adv.
Mr. Abhishek Atrey, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are dismissed in terms of the signed order.

(NAVEEN KUMAR) (S.S.R. KRISHNA)
COURT MASTER COURT MASTER

(Signed order is placed on the file)