ORDER ON APPLICATION FILED BY THE ACCUSED U/SEC.91 OF CR.P.C.

This is a case pertaining to the alleged offence punishable U/sec.138 of N I Act. This application has been filed by the accused U/sec.91 of Cr.P.C. praying for a direction from this Court to the complainant factory to produce the following documents.

1) Original copy of the agreement of the year 2011-12 said to be entered by complainant with accused.

2) The copy of the entire H & T statements of accounts pertaining to accused maintained by the complainant factory in daily routine course of business.

3) Complete audit report of the complainant factory for the year 2011-12 and 2012-13.

4) Original document regarding settlement of account by the complainant with the accused as contended in the complaint.

5) all other related documents.

The learned counsel for the complainant has filed the objection. Heard both the sides at length and perused the relevant materials on record.

As aforesaid this complaint has been filed by the Malaprabha Sahakari Sakkare Kharkhane (N) against the accused for the alleged offence punishable U/sec.138 of NI Act. As per the arguments of the learned counsel for the complainant factory, the complainant factory has taken huge amount of loans from “Apex Co-operative Bank, Bengaluru” & “Bank of India, M. K. Hubli” and have utilized the same to give advance amount to the contractors. The role of the contractors is to supply the labors as well as the vehicles to the complainant factory for the purpose of transporting the sugarcane during the harvesting seasons. Based on the aforementioned terms the complainant factory and the accused had entered into contract, as such the complainant factory has advanced the loan.

Since, the accused has not complied with the terms of the contract, the authorized representative of the complainant factory has approached the accused personally and requested to settle the accounts by asking for the refund of the advance amount. The accused after due negotiations has settled the account by refunding the money by way of cheque. Subsequently, the cheque issued by the accused was returned with an endorsement “insufficient funds”, despite of service of demand notice, the accused has failed to pay the cheque amount, as such the complainant factory was constrained to file this complaint before this Court.

The defence of the accused is that, the accused has worked as per the terms of the contract and the complainant factory has not paid the amount which is due for the accused as per the terms of the contract entered between the parties. If the aforementioned documents are called for, it will give a clear picture with regard to the due amount. Further, it was vehemently argued that the accused did not go for settlement with the complainant factory as contended by the complainant factory therefore the question of issuing cheque by the accused never arises, the complainant factory has misutilized the cheque which was given as security purpose at the time of entering into the contract.

No doubt, Sec.91 of Cr.P.C. empowers this Court to call for any document or a thing by issuing the summons. None of the counsels have disputed about the powers of this Court. In order to summon a document the first and foremost thing the Court shall look into is “whether such document(s) is/are required or necessary for any purposes?”. Needless to say the powers U/sec.91 of Cr.P.C. has to be exercised in consonance with Sec.5 of Indian Evidence Act, 1872 in other words, if the document(s) is/are relevant then only the Court shall summon the same. The elaborate concept of “the relevancy of facts” is governed under chapter-II of Indian Evidence Act, 1872.

Now, let me examine whether the documents which have been sought by the accused are relevant for the purpose of trial for the offence punishable U/sec.138 of NI Act? In the judgment of the Hon'ble Supreme Court in **CRIMINAL APPEAL NO(S). 132 OF 2020 (Arising out of SLP (CRL.) No.1621 of 2018), between D. K.**

CHANDEL VERSUS M/S WOCKHARDT LTD. & ANR., (DD. January 20, 2020) it was clearly opined as hereunder :-

“As rightly observed by the High Court production of the account books/cash book may be relevant in the civil court; but may not be so in the criminal case filed under Section 138 of the N. I. Act. This is because of the presumption raised in favour of the holder of the cheque. In view of the concurrent findings recorded by the Trial court as well as by the High Court we do not see any ground warranting interference with the conviction of the appellant under Section 138 of the N. I. Act.”

Before coming into the merits of this case, let me discuss the very brief facts based on which the Apex Court has come to the conclusion that production of account book/cash book may be relevant in civil Court; but may not be so in criminal case filed U/sec.138 of NI Act. In that case the trial Court has convicted the accused for the offence punishable U/sec.138 of NI Act and sentenced him to undergo imprisonment for six months & has also imposed a fine of Rs.4,17,148/-. Based on this conviction, the appeal was preferred. The Hon'ble First Appellate Court i.e. The Hon'ble Additional Sessions Court, Bathinda has reversed the order of conviction and acquitted the accused by opining that, the complainant did not produce cash & account books to prove that the amount was due and payable by the accused. However, the Hon'ble High Court of Punjab & Haryana has reversed the order of acquittal passed by the Hon'ble Additional Sessions Court, Bathinda and restored the judgment of the trial Court by holding that the production of account books/cash book may be relevant in the civil Court, but may not be so in the criminal case filed under Sec.138 of NI Act. The Hon'ble Apex Court has confirmed the findings of the Hon'ble High Court of Punjab & Haryana in the aforementioned case.

This ruling of the Hon'ble Apex Court is squarely applicable to the case on hand. This case is instituted for the alleged offence punishable U/sec.138 of NI Act. Hence, from the aforesaid ruling of the Hon'ble Apex Court it is crystal clear that, the production of accounts book/cash books is not relevant in the criminal case pertaining to the offence punishable U/sec.138 of NI Act. As per Sec.5 of Indian Evidence Act, evidence may be given only of facts in issue and relevant facts. It is pertinent to note that Sec.5 is exhaustive in its nature as it says evidence may be given in a suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, **and of no others.** Which means that, evidence may be given in a suit or proceedings if and only if such evidence falls from Sec.6 to Sec.55 of Indian Evidence Act **and not others**. Since, the Hon'ble Apex Court has clearly held that, the production of cash/accounts books are not relevant in the prosecution under Sec.138 of NI Act, this Court cannot summon a document which is not relevant by exercising the powers conferred to it U/sec.91 of Cr.P.C.

It is not in dispute that, the accused have entered into contract with the complainant factory. However, the dispute is with regard to entering of compromise, issuance of cheque and also the due amounts. If at all if the accused has worked as alleged by him and if there is any due from the complainant factory, the remedy lies elsewhere and he cannot have the defence of set off as envisaged U/O.VIII Rule 6 of CPC in a criminal trial U/sec.138 of N. I. Act. Needless to say, the accused can certainly take the defence of non existence of legally enforceable debt as contended by the complainant during the course of trial and it would be the burden on the complainant to prove its case as contended by it. If the sought documents are summoned, this will be nothing but assuming the powers of the Civil Court to look into the fact of the amounts due/set off such as who is entitled for what amount etc., which is impermissible in a prosecution U/sec.138 of N I Act for the criminal Court.

Further, the accused persons in CC. Nos.876/2015, 999/2015, 1046/2015, 1051/2015 and 1062/2015 had filed the similar application, this Court had dismissed them via detailed order on the aforesaid same grounds, the same were challenged by the accused persons of those cases before the Hon’ble High Court of Karnataka, Dharwad Bench as per Crl. Petition Nos.100680/2021, 100681/2021, 100686/2021, 100688/2021 and 100690/2021. The Hon’ble High Court of Karantaka was pleased to dismiss all the aforesaid criminal petitions and has confirmed the order of dismissal of this Court by observing as hereunder :-

“The reasons assigned by the learned Magistrate for dismissing the application filed by the petitioner under Section 91 of the Cr.P.C. cannot be said to be illegal or perverse. There is no merit in the petition. The petition is dismissed. Pending application does not survive for consideration and the same is disposed of.”

Hence, I am of the considered opinion that, the documents sought by the accused are not relevant to the proceedings on hand, in the absence of such document certainly this case can be decided. With these observations, I proceed to pass the following;

ORDER

The application filed by the accused U/sec.91 of Cr.P.C. is hereby dismissed.

Looking into the prevailing Covid-19 Pendamic situation, the costs are made easy.

For substance of accusation by 25.02.2022.

28.01.2022.
Civil Judge & JMFC, Kittur.