

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-A-385 to 387-MA-2013,
CRM-A-455, 456 and 498-MA-2013
Date of decision:14.7.2015**

Sqn. Ldr. Gurdial Singh

...Applicant

Versus

M/s Gawritex Industries Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Sunil Chadha, Sr. Advocate with
Mr.Kirpal Singh Thakur, Advocate for the applicant.

Mr.Gurpreet Singh, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

These are six identical applications under Section 378(4) of the Code of Criminal Procedure ('Cr.P.C.' for short), between the same parties, wherein applicant is seeking leave of this Court to appeal against the impugned judgment of acquittal, whereby six identical complaints under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short), filed by the present applicant were dismissed, acquitting the respondents-accused from the charges framed against them. All these applications bearing Nos. **CRM-A-385 to 387-MA-2013, CRM-A-455, 456 and 498-MA-2013** (Sqn. Ldr. Gurdial Singh v M/s Gawritex Industries Ltd. and another) are being decided by way of this common order. However, for the facility of reference, facts are being culled out from CRM-A-385-MA-2013.

Briefly put, facts of the case are that a lease-deed dated 1.1.2004 was executed between the parties, for a period of five years, @ Rs.1.10 lacs per month. The applicant was the landlord and the respondents were the tenants. It is undisputed between the parties that the applicant had received three months' rent in advance as security, which was adjustable on the termination of the tenancy. It is also common case of the parties that the applicant-landlord received the rent for the month of January 2004 and he also received post-dated cheques from the respondents-accused upto the month of December 2004. It is further common case of the parties that the applicant had received the rent upto the month of June 2004. The accused-respondent issued notice dated 19.7.2004 to the applicant-landlord for termination of the tenancy.

It was the case of the accused-respondents that premises were vacated on 19.10.2004. Although there was some dispute between the parties in this regard, yet it is not the issue involved herein. The applicant-landlord tried to encash those cheques, which were meant for the months of July 2004 onwards pleading that he was entitled for the same, because the rent of three months taken in advance was to be adjusted only after termination of the tenancy. On the other hand, accused-tenant pleaded that landlord-applicant had no right to do so, because he was bound to adjust the rent of three months taken by him in advance, immediately after the accused had vacated the premises on 19.10.2004. The cheques having been received back dishonoured for want of sufficient funds, landlord-applicant issued legal notice dated 11.12.2004, demanding the payment of cheque amount.

Since the accused-tenants failed to make the payment of cheque amount,

applicant filed his complaint under Section 138 of the NI Act. Summoning order was issued in all the six cases. Accused appeared, pleaded not guilty and claimed trial.

Having found a prima facie case, the learned trial Court framed the charge against the accused. The complainant-applicant, in order to substantiate the charges against the accused-respondents, led his evidence. He appeared as CW-1, besides producing his other evidence including the documentary evidence.

Statement of the accused was recorded under Section 313 Cr.P.C. The accused denied the allegations, alleged false implication and claimed complete innocence. Accused produced Mukesh Goyal as DW-1 in his defence evidence, besides the documentary evidence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant-applicant has failed to bring home the guilt against the accused. Accordingly, complaint of the applicant was dismissed and the accused was acquitted of the charges framed against him, vide impugned judgments dated 1.3.2013, passed in all the six cases. Hence these six identical applications under Section 378(4) Cr.P.C. by the complainant, seeking leave to appeal against the judgment of acquittal.

Learned senior counsel for the applicant submits that the applicant has duly proved his case before the learned trial Court, by leading cogent and convincing evidence, which was sufficient to record the conviction of the accused-respondent. The dispute between the parties was regarding six cheques from the month of July 2004 to December 2004. He

submits that even if the premises is treated to have been vacated on 19.10.2004 by the accused-respondent, still the applicant-landlord was entitled for rent for the months of July, August, September and October. He further submits that since the learned trial Court has misdirected itself, while not appreciating the evidence available on record, in the correct perspective, the impugned judgment of acquittal was not sustainable in law. He prays for setting aside all the six identical impugned judgments of acquittal, by allowing these six applications.

Per contra, learned counsel for the respondents submits that it was a totally frivolous and dishonest litigation initiated by the applicant. The applicant was not entitled for any amount on account of rent. Despite the fact that the tenants-respondents have vacated the premises on 19.10.2004, applicant-landlord filed a frivolous petition before the Rent Controller for eviction of the accused on the ground of arrears of rent. The learned Rent Controller illegally assessed the provisional rent vide order dated 28.8.2008, which was challenged by the respondents-accused before this Court by way of Civil Revision No.5185-2008 {M/s Gawritex Industries Ltd., Panchkula v. Sqn. Ldr. Gurdial Singh (Retd.) & others}.

Civil Revision of the respondents was allowed by this Court, vide its judgment dated 6.7.2009 reported as 2009(2) RCR (213), observing therein that it was a dishonest litigation, at the hands of the tenant-applicant. He further submits that the applicant filed as many as four recovery suits against the present respondents-accused and all four recovery suits were dismissed by the learned Civil Court, which is a matter of record. The eviction petition of the applicant was dismissed by the learned Rent

Controller and thereafter even his appeal has been dismissed by the learned appellate authority. He next contended that in the civil suits for recovery as well as in his eviction petition, applicant was not found entitled for recovering the rent from the tenants-accused/respondents for the period from the months of July 2004 to January 2005. He concluded by submitting that the learned trial Court has rightly dismissed all the six complaints of the applicant and these applications are liable to be dismissed with heavy costs.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the instant case, noticed hereinabove, all these six applications under Section 378(4) Cr.P.C. do not warrant any interference, at the hands of this Court. To say so, reasons are more than one, which are being recorded hereinafter.

It has gone undisputed between the parties that the applicant has received in advance, the post-dated cheques from the respondents-accused, meant for payment of rent. The learned Rent Controller, appellate authority as well as the civil court have found that the premises were vacated by the accused-respondents on 19.10.2004. Learned counsel for the respondents has been found fully justified to contend that even this Court has observed that it was a dishonest litigation, at the hands of the applicant. The relevant observations made by this Court in paras 14 to 17 of its judgment dated 6.7.2009, which can be gainfully referred in the present case, read as under:-

“Moreover, the facts enumerated below are self

speaking and need no further explanation as to why the order of provisional assessment cannot be sustained. In accordance with Clause 8 of the lease deed, the petitioner decided to vacate the premises by sending the notice dated 19-07-2004. The notice reads as follows :-

“I hereby give you clear notice of three months from today w.e.f. 20-07-2004. I shall vacate the premises on 19-10-2004. I would further like to inform you that the security amounting to Rs.3,30,000/- which was paid to you as advance be adjusted as rent for the future three months.”

Interestingly, the respondent-landlord refused to accept the same and replied to the notice dated 19-07-2004 as follows :-

“So, you have no right to terminate the lease in question on any day before completion of the month. Thus, your present notice does not meet the requirement of three months clear notice qua the termination of lease, as envisaged in Clause 8 of the said lease deed.”

It was further stated in the reply as under :-

So, in view of the facts and circumstances detailed in present reply, you are advised to desist from doing any of the acts as stipulated in the present notice dated 19-07-2004 failing which you would render yourself liable for all the legal consequences thereof.”

Thereafter, sensing the intention of the landlord, the petitioner-tenant playing safe, only informed the landlord that he was vacating the premises on 19-10-2004. The language of this communication reads :-

“In this connection, we may inform you that as per our Notice dated 19-07-2004 for vacation of tenanted premises, we are vacating the premises on 19-10-2004.

So you are requested to take the premises i.e. SCO No.1108-09, Sector 22-B, Chandigarh.”

Knowing what he was up against, the tenant wrote another letter dated 20-10-2004 in the following terms :-

“I would like to inform you that I have vacated the tenanted premises SCO No.1108-09, Ground Floor, Sector 22-B, Chandigarh, on dated 19-10-2004, as per notice dated 19-07-2004 and one other letter dated 18-10-2004. This is for your kind information.”

Thereafter, the Civil Suit filed by the landlord-respondent was also dismissed. Now after 3 ½ years of the notice of having vacated the premises, the rent petition has been filed. In view of the above facts, the present litigation is nothing but a dishonest litigation.

The communication of the landlord dated 29-10-2003 (R/3) after 81 days appears to be nothing but evidence created as an afterthought.

Learned counsel for respondents, herein, submitted that the petitioner has not handed over the vacant possession as the part of the window has been sub-let to Ajay Partap. Admittedly, no such ground has been taken by the landlord in the eviction petition. Moreover, even if this ground is subsequently taken, the only relief that can be granted is eviction of the tenant but cannot be a ground for passing of the provisional order of assessment of rent, which is the only subject matter in the present revision.”

During the course of hearing, learned senior counsel for the applicant could not deny the material fact that finally the eviction petition of the applicant, on the ground of non-payment of rent, was dismissed as well as his appeal has also been dismissed by the appellate authority. Similarly, he could not deny another material fact that all the four recovery suits filed

by the applicant have been dismissed by the learned civil court. In fact, learned senior counsel for the applicant could not deny all these facts and rightly so, it being a matter of judicial record. Having said that, this Court feels no hesitation to conclude that the learned trial Court committed no error of law, while passing the impugned judgment of acquittal and the same deserves to be upheld.

Before arriving at a judicious conclusion, the learned trial Court recorded its cogent findings in paras 12 to 16 of the impugned judgment of acquittal and the same deserve to be noticed here, which read as under:-

“It is apparent from the cross examination of complainant and copy of lease deed ExD1, cheque in question was given as post dated cheque for the payment of future rent in compliance of the terms of lease Deed Ex D1 and he has also received three months rent of Rs.3,33,000/- in advance as security. As per the version of accused he terminated the lease by giving three months notice Ex D2 in compliance of clause 8 of the lease deed Ex D1 and vacated the premises on 19-10-2004 with regard to which notice Ex D5 was sent. The complainant admits the receipt of those notices but disputes its genuineness, termination of lease and vacation of premises.

The very first objection of, complainant is that lease could have been terminated by giving three British calendar months notice and since the notice Ex D2 was issued on 19-7-2004, same is not valid. This contention of complainant does not sound convincing as first of all there is no such condition in the lease deed. Clause 8 the lease deed Ex D1 reads that either of the party can terminate the lease at any time by giving clear three months notice in writing and this fact has been admitted by complainant in his cross-examination.

There is no such condition that there should be notice of three British Calendar months. Even otherwise, this issue has been decided by the learned Rent Controller in favour of accused. Moreover, even in case for the sake of arguments the contention of complainant is accepted in that would also not help the complainant in any manner as at most it can be said that he was entitled to rent only upto 30-10-2004 but not to rent accruing thereafter.

The contention of complainant with regard to competency of Amar Gawri as Director to issue notice ExD2 also inspire no confidence as same Director has signed lease deed ExD1 on behalf of M/s Gawritex Industries Limited. Merely because in the lease deed he has disclosed his designation as Managing Director and in the notice as Director cannot be made a ground to hold that he was not having authority to terminate the lease. The non production of resolution passed by accused company regarding termination of lease, can also not be said to be fatal to the defence of accused as the production of said document was never sought. Even otherwise, the matter was between director and company. Since till date the accused No.1 has not disowned the act of Amar Gawri of sending notice, it cannot be said that Amar Gawri had acted beyond his authority.

So as to decide the contention of the complainant regarding non vacation of premises and delivery of possession, this court find it proper to consider the findings of learned Rent Controller given in order dated 8-12-2011 Ex D8 as this question was directly and substantially in issue between the parties, in rent petition and learned Rent Controller was having the exclusive jurisdiction to decide the same. In his order ExDB, the learned Rent Controller has categorically observed that respondent had vacated the premises on 19-10-2004 and petitioner/complainant has failed to prove that he

remained in possession even after expiry of the period of notice ExD2. Thus, this court is not required to re-appreciate the evidence on this point nor the parties have led much evidence so as to substantiate their stand on the same. Relying upon the orders of Learned Rent Controller, this Court find itself bound to hold that the relationship of landlord and tenant ceased to exist as on 19-10-2004 and on account of vacation of premises, the complainant was not entitled to rent accruing thereafter.

The fact that complainant has preferred appeal against the orders of Ld Rent Controller is of no help to the complainant, as he has not produced on record any copy of orders passed by appellate authority regarding stay of orders.

Accordingly, in view of my aforementioned discussion, this Court is of the considered view that the accused appears to have succeeded, as the version of complainant itself creates serious doubt and same is sufficient to hold that presumption regarding passing of consideration has been duly rebutted. Hence, in view of above discussion, this Court is of the view that the complainant has failed to bring home the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act. Accordingly, the accused is hereby acquitted and his surety stand discharged...”

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in **Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638**. The law laid down by the Hon'ble Supreme Court in the case of **Arulvelu** (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar**

Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015).

The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in ***Upendra Pradhan's case*** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of

M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court.

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.” (Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty

is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court’s revisional jurisdiction, this Court has

held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, “that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view.” This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.”

Reverting back to the facts of the present case and respectfully following the law down by the Hon'ble Supreme Court, in the cases referred to hereinabove, this Court is of the considered view that the impugned judgment of acquittal is based on factually correct and legally justified approach followed by the learned trial Court.

Further, during the course of arguments, learned senior counsel for the applicant could not point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgment of acquittal, which may warrant any interference, at the hands of this Court. Since the impugned judgment of acquittal has not been found to be suffering from any patent illegality, the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that all the six applications are misconceived, bereft of merit and without any substance, thus, these must fail. No case for interference is made out.

Resultantly, with the above-said observation made, all the six applications stand dismissed, however, with no order as to costs.

14.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE