**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. A-785-MA of 2013 (O&M)
Date of decision : 23.01.2015**

M/s Amrit Agrovet Pvt. Ltd.

...**Applicant/Appellant**

versus

Narender Kumar

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tapan Kumar Yadav, Advocate,
for the applicant-appellant.

****

RITU BAHRI , J.

Challenge is to the judgment dated 22.07.2013 passed by the Judicial Magistrate, Ist Class, Gurgaon, whereby accused-respondent has been acquitted of the offence under Section 138 of Negotiable Instruments Act.

M/s Amrit Agrovet Pvt. Ltd.-complainant filed a complaint with the allegations that it was carrying on the business of manufacturing of poultry feeds. Accused-respondent is carrying on the business of trading in poultry in the name and style of M/s Narender Poultry Farm, Sidhrawali. It is alleged that the accused-respondent had approached the complainant for supply of poultry feeds on credit and had promised to pay the price of the feeds within two weeks of purchase. Thereafter, the complainant started supplying poultry feeds to the accused, payments of which were from time to time. He had a running account with the complainant, according to which, an amount of Rs.6,71,993/- was outstanding against him. Accordingly, in discharge of his legal liability, accused-respondent issued a cheque bearing

No.581382 dated 26.04.2011 for a sum of Rs.6,71,993/- in favour of the complainant drawn on Gurgaon Gramin Bank, Sidhrawall, District Gurgaon. However, on presentation, the said cheque was dishonoured vide memo dated 04.05.2011 with the remarks "insufficient funds" in the account of the accused-respondent. Thereafter, the complainant served a legal notice dated 23.05.2011, calling upon the respondent to make payment of the cheque amount. But, the accused-respondents failed to make the payment. Hence, the complaint.

After conclusion of preliminary evidence, vide order dated 02.07.2011, the accused-respondent was summoned to face trial for commission of offence under Section 138 of NI Act.

On appearance of the accused in the Court, notice of accusation under Section 138 of NI Act was served upon him, to which, he pleaded not guilty and claimed trial.

In order to prove its case, Virender Kumar Mittal, authorized representative of complainant company, appeared as CW-1. Thereafter, the evidence of the complainant was closed by order. Thereafter, statement of the accused-respondent under Section 313 Cr.P.C. was recorded, wherein entire incriminating evidence was put to him. However, he denied the same. In defence, the accused examined Dilpat as DW-1.

The trial Court, after going through the entire evidence led by the parties acquitted the accused-respondent vide impugned judgment dated 22.07.2013.

The complainant while appearing as CW-1, tendered his affidavit (Ex.CW1/A) and reiterated the contends of the complaint. He also proved board resolution (Ex.P1), statement of account (Ex.P2), cheque in question (Ex.P3), return memo (Ex.P4), copy of legal notice (Ex.P5), postal receipt (Ex.P-6), articles of memorandum of association (Ex.P7) and delivery challans and invoices (Ex.P8-Ex.P91).

The defence taken by the accused-respondent before the trial Court was that the complainant has brought on record statement of account pertaining to the financial year 2008-09 only and not of any earlier period, whereas the major portion of the cheque amount pertains to the earlier period. It was argued that the accused had business dealings with the complainant till the year 2008, therefore, there was no occasion for the accused to issue a cheque in the year 2011 i.e. after a gap of three years. It was further argued that the accused had issued two cheques bearing Nos.581381 and 581382 in favour of the complainant in the year 2005, out of which one cheque bearing No.581381 was got encashed by the complainant in the year 2005 itself. The second cheque i.e. cheque No.581382 was kept as security and the account of the accused-respondent with the complainant was cleared in 2008.

In his cross-examination, the complainant had admitted that the last dealing between the parties had taken place in the year 2008. As per the deposition of Dilpat (DW-1), cheque bearing No.581381 had been encashed by the complainant in the year 2005. The cheque in question, which bears No.581382, was the next in the same series. This cheque was lying with the complainant since the year 2005. The fact that the last dealing between the parties took place in the year 2008 was substantiated by statement of account (Ex.P2) and bills (Ex.P8 to Ex.P91). In the statement of account (Ex.P2), opening balance against the accused-respondent was shown to be Rs.4,46,683/-, which clearly indicated that this amount was outstanding in previous financial years. No document was produced on record in order to prove how such an amount was outstanding in the previous financial years. The bills (Ex.P8 to Ex.P91) were pertaining to the years 2007-2008 only. Those bills were of much higher value than reflected in the statement of account (Ex.P2).

The statement of account, which reflected an outstanding amount of Rs.4,46,683/- against the accused-respondent did not reveal the true state of affairs. The cheque in question remained with the complainant since the year 2005 and there was no occasion for the accused to give this cheque for encashment in the year 2011. The complainant was not able to lead any evidence to show that after the last dealing with the accused in the year 2008, any amount was due towards him. Therefore, the complainant could not discharge the presumption under Section 139 of NI Act.

A perusal of the record of trial Court and the evidence led by the complainant further show that he has admitted that after 2008, there was no business dealing with the accused-respondent. The cheque in question was in possession of the complainant since 2005 and the statement of account (Ex.P2) did not reflect true outstanding amount.

Having examined the impugned judgment, this Court is of the view that there is no evidence on the record, which has been misread by the trial Court, which can lead to conviction of the accused-respondent.

Dismissed.

23.01.2015 **(RITU BAHRI)**
ajp **JUDGE**