

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

CRM-A-1146-MA of 2014 (O&M)

Date of decision: 22.09.2015

Ram Lal

...Applicant

Versus

Gurmail Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Amit Dhawan, Advocate for the applicant.

Mr. Umesh Kumar Kanwar, Advocate
for the respondent.

Jitendra Chauhan, J. (Oral)

The present petition along with another petition bearing CRM-A No. 1060-MA of 2014, are being decided by way of this common order, as these have been arisen out of the complaint filed by the applicant. However, the facts are being derived from CRM-A No. 1146-MA of 2014.

By filing the present petition, under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C.'), the applicant has assailed the order dated 12.01.2012, passed by the Sub Divisional Judicial Magistrate, Phillaur, dismissing the complaint and acquitting the accused (respondent herein) of the charge framed against him under

Section 138 of Negotiable Instruments Act (for short 'the Act') and Section 420 of the Indian Penal Code (for brevity 'IPC').

Learned counsel for the applicant contends that learned Court below without appreciating the material facts and cogent evidence on record has passed the impugned order which is contrary to law. The learned Court has not taken into consideration the fact that there is ample evidence on record to prove that the applicant paid Rs. 6 lacs to the respondent for sending him to U.K. The respondent had entered into compromise on 31.01.2009 to pay the amount in two installments and in order to discharge his liability, he issued two post dated cheques to the applicant, however, the trial Court has ignored the fact of issuing cheques by the respondent in favour of the applicant. The cheques which were issued were dishonoured due to insufficient funds in the account of respondent. The learned Court has also not taken into consideration the documents Ex.C1 to C9 which would establish the liability of respondent towards the applicant.

On the other hand, the learned counsel for the respondent vehemently argued that the trial Court has rightly dismissed the complaint of the applicant. The applicant has failed to justify that the above stated cheques had been issued by respondent in discharge of his legal liability.

This Court has heard the rival contentions of the parties and carefully gone through the impugned judgment.

The learned Judicial Magistrate has recorded that a lot of doubt exists in the mind of the Court regarding existence of actual transaction between the parties and regarding the genuineness of the claim of the applicant, since the applicant has failed to bring on record the proof regarding the amount or sum advanced by him in lieu of sending him abroad by the respondent.

There is nothing on record to show that the said cheques were given by the respondent to discharge his legal liability. Otherwise also, the applicant has failed to bring on record the agreement dated 31.01.2009, vide which the respondent agreed to pay the amount in two installments. There is no document on record to show the liability of respondent towards the applicant. Neither any receipt nor any authenticated document has been placed on record to substantiate the claim of the applicant.

In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having

secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Accordingly, the leave to appeal stands declined.

Dismissed.

22.09.2015

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(JITENDRA CHAUHAN)
JUDGE