

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

CRM-A-1808-MA of 2015 (O&M)

Date of decision: 14.12.2015

Ashok Kumar

...Applicant

Versus

M/s CBM Engineering Works

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. G.C. Shahpuri, Advocate for the applicant.

Jitendra Chauhan, J. (Oral)

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 judgment dated 28.08.2015, passed by the Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri, whereby the accused has been acquitted in criminal case No.2467 of 2013, under Section 138 of the Negotiable Instruments Act.

It is contended by learned counsel for the applicant that the impugned judgment dated 28.08.2015, passed by the learned trial Court is totally unjustified and unsustainable in the eyes of law. The trial Court has dismissed the complaint without appreciating the fact that the cheque bearing No. 010133 dated 05.08.2013 of Rs. 85,920/- issued by the respondent towards discharge of his liability, stood dishonoured with the remarks 'funds insufficient'. Further, the learned trial Court has totally

ignored the material fact that the respondent did not deny his signature on the cheque, therefore, it can be safely presumed that prima facie presumption exists in favour of the applicant and onus of rebutting the said presumption was on the respondent/accused. It is further submitted that the respondent had stated in his defence that the applicant was to purchase the material as per the purchase order for the respondent, however, neither any purchase order has been brought on record nor any document has been placed on record to show that the applicant left the job and was working with the respondent. However, the trial Court erred in not taking into consideration the above said facts on record.

Heard.

The signatures on the cheque are not in dispute. 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 stand taken by him in his cross examination is altogether different from that of the complaint. On the one hand, he had stated that the respondent/accused had liability towards him on account of business dealings whereas during his examination as CW1, he had stated that the liability arose on account of friendly loan.

Even otherwise, there is nothing on record to show that the applicant had advanced the amount in question to the respondent. No date of payment, month or year was mentioned reflecting details as to when the respondent borrowed the money. Neither any receipt nor any

authenticated document has been placed on record to substantiate his claim. The applicant had duly admitted in his cross examination that he knows that a sum exceeding Rs.20,000/- cannot be given to any person in cash. In the absence of any authenticated document, it is highly improbable that he advanced an amount of Rs.1,70,580/- to the respondent without any receipt or pronote. There is no document on record to show the legal liability of the respondent towards the applicant. The allegations of the applicant appear to be vague.

In these 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.

14.12.2015

sumit.k

(JITENDRA CHAUHAN)
JUDGE