

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

**CRM-A-295-MA of 2015 (O&M)**  
**Date of decision : 02.12.2015**

Om Chand ...Appellant

Versus

Sh. Brij Lal ...Respondent

**CRM-A-296-MA of 2015 (O&M)**

Om Chand ...Appellant

Versus

Sh. Brij Lal ...Respondent

**CRM-A-297-MA of 2015 (O&M)**

Om Chand ...Appellant

Versus

Sh. Brij Lal ...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. Ashit Malik, Advocate for the appellant.

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**JITENDRA CHAUHAN, J. (Oral)**

Vide this common order, the aforesaid three appeals are being disposed of as a similar issue is involved in all these appeals. For the sake of convenience the facts have been taken from CRM-A-295-MA of 2015.

2. The appellant challenges the impugned judgment dated

07.11.2014, passed by the learned Judicial Magistrate Ist Class, Karnal whereby, the respondent was acquitted in complaint complaints Nos.808 of 2012; 739 of 2012 and 718 of 2012, filed under Sections 138 of the Negotiable Instruments Act, 1881.

3. Brief facts of the case are reads as under:

*“1. Wife of the accused, namely, Urmil was the owner in possession of a house situated at Village Kailash, Tehsil & District Karnal. She entered into an agreement dated 17.10.2007 with complainant as well as Pawan Kumar Mangal and Ram Kumar Dahiya whereby she mortgaged her house against a loan of Rs. 5,46,000/-. The wife of the accused had assured to repay the amount by 20.10.2008 but she failed to do so. In discharge of this liability, accused issued a cheque No.925776 dated 31.05.2012 for Rs. 3,60,000/- drawn at State Bank of India, Karnal in favour of the complainant. The complainant presented the said cheque for encashment but the same was returned unpaid with remarks “Funds Insufficient” vide memo dated 9.6.2012. Thereafter, statutory legal notice dated 21.06.2012 was duly served upon the accused through registered post whereby he was called upon to make the payment of cheque but the accused has failed to make payment of the cheque within the stipulated of 15 days and hence the complaint in question was filed.*

*2. After preliminary evidence of the complainant, the accused was summoned to face trial for the offence punishable under Section 138 of the Negotiable Instrument Act.*

*3. To prove his case, the complainant examined Anand, official of State Bank of India, Karnal as CW1. He tendered statement of account of accused for the period 1.4.2012 to 31.08.2012- Ex. CW1/A.*

4. *The complainant himself stepped into the witness box as CW2 and tendered affidavit Ex. CW2/A reiterating the averments made in the complaint along with documents:- Cheque Ex. C1, Memo-Ex. C2, legal notice – Ex. C3, postal receipt- Ex. C4, copy of agreement dated 17.10.2007 – Ex. C5 and copies of agreements – Ex. C6 & C7.*

5. *Thereafter, the complainant closed his evidence vide separately recorded statement dated 9.9.2014.*

6. *The statement of accused u/s 313 Cr.P.C. was recorded putting the entire incriminating material in the complainant's evidence, in which he pleaded to be innocent and alleged his false implication by the complainant. In defence, he tendered certified copies of plaint & written statement of Civil Suit No. 168 titled as Om Chand vs. urmil – Ex. D1 & Ex. D2 respectively. Thereafter, the accused closed his defence evidence vide separately recorded statement dated 7.11.2014.*

7. *After hearing learned counsel for the parties and perusing the material evidence on record, the learned trial Court acquitted the accused-respondent of the charge framed against him.”*

4. Hence, the present application for leave to appeal against the impugned judgment of acquittal.

5. The learned counsel contends that the agreement in question as well as the signatures on the cheques issued by the respondent are admitted. However, the amount was already settled by the husband, there was no necessity on the part of the appellant to get the cheques presented. It is noticed that the transactions took place in the presence of the eyewitnesses namely Naresh Kumar and Satya Narain. To prove the genuineness of the

execution of agreement, the attesting witnesses were not examined. In this case, learned counsel for the appellant contended that there was sufficient evidence of record to prove that accused had issued cheques in dispute to cheat the complainant because at the time of issuance of cheques, accused knew that it would be dishonoured with remarks “Insufficient Funds”, therefore the accused is liable to be punished in accordance with the law.

6. I have heard the contentions raised by the learned counsel for the applicant-appellant and perused the judgments carefully.

7. In **State of UP Vs. Ram Sajivan and others**, 2010 (1) SCC 529, the Hon'ble Supreme Court of India, observed as under:-

*“In the case of **Raj Narain v. State of U.P. & Others** [Criminal Appeal Nos. 891-892 of 2002 decided on 18.09.2009], this Court reiterated the aforesaid view and held that even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. However, this Court will not hesitate to interfere with such order if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust.”*

8. In the present case, there is no dispute regarding the signatures of accused-respondent upon cheques, therefore, the onus was upon accused-respondent to rebut the presumption that the cheques in question were issued in discharge of legally enforceable debt/liability. To rebut the said presumption, the accused had mainly relied upon the cross-examination of the complainant. The complainant, first and foremost, did not examine the attesting witness to prove due execution and genuineness of the cheques.

From the perusal of the specific suggestions put to the complainant, it is clearly evident that the accused has specifically challenged the due execution and genuineness of the said agreement. The transaction took place in the presence of eyewitnesses, namely, Naresh Kumar and Satya Narain. The learned trial Court was of the view that once the due execution of the agreement was challenged by the accused, it was incumbent upon the appellant to examine one of these attesting witnesses to prove the due execution of agreement but the appellant failed to do so.

9. Keeping in view the facts and circumstances of the present case, this Court feels that judgment dated 07.11.2014 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Karnal does not suffer from illegality or perversity. Otherwise also, the view taken by the trial Court does not suffer from any perversity or illegality.

Accordingly, the present leaves to appeals are declined.

**02.12.2015**

*ashok*

**(JITENDRA CHAUHAN)**  
**JUDGE**