

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

**CRM-11253-2014 in/and
CRM-A-549-MA-2014
Date of decision:12.03.2015**

M/s Mahindra Hire Purchase (Regd) through its Managing Partner
...Petitioner

Versus

Ashwani Dada

...Respondent

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.Ramandeep, Advocate for
Mr.R.S.Bajaj, Advoate for the applicant.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicant, by way of instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks leave of the Court to file the appeal against the impugned judgment of acquittal dated 12.10.2011 passed by the learned trial Court, whereby the complaint of the applicant under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') was dismissed. Applicant also seeks condonation of delay of 839 days in filing the application for leave to appeal.

Learned counsel for the applicant submits that the applicant-complainant brought on record sufficient and cogent evidence so as to bring home the guilt of respondent-accused. He further submits that an amount of Rs.1.50 lacs was advanced in favour of the respondent. This cheque in question was issued by the respondent with a view to discharge his existing financial liability. Once the cheque was dishonoured because of insufficient

funds, applicant-complainant was left with no other option except to file the complaint under Section 138 of the NI Act. He further submits that during the course of trial, complainant duly proved his case but the learned trial Court misdirected itself, while passing the impugned judgment of acquittal. He would next contend that the documentary as well as oral evidence brought on record by the applicant was not properly appreciated by the learned trial Court, while passing the impugned judgment. He prays for setting aside the impugned judgment, by allowing the instant application.

Seeking condonation of delay, learned counsel for the applicant submits that since the applicant was pursuing his remedy before the wrong forum, the delay caused was bonafide. He further submits that the applicant was not going to gain anything in delaying the matter and the delay of 839 days deserves to be condoned.

Having heard the learned counsel for the applicant, the delay of 839 days is condoned, for the reasons stated in the application for condonation of delay.

Coming to the merits of the case, after giving thoughtful consideration to the contentions raised by the learned counsel for the applicant, none of the arguments raised by the learned counsel for the applicant has been found worth acceptance and the present one has not been found to be a fit case warranting interference at the hands of this Court, for the following more than one reasons.

It is a matter of record and not in dispute that as per the statement Ex C7 suffered by the complainant-applicant himself, the amount due was Rs.3,99,550/-. However, the amount claimed by the applicant-complainant by way of complaint under Section 138 of the NI Act was

Rs.1.80 lacs only.

During the course of hearing, when a pointed question was put to the learned counsel for the applicant to reconcile about this major difference between these two figures, he had no answer and rightly so, because it was a matter of record. This material fact itself was sufficient to raise a serious doubt in the story put forth by the complainant. Although this discrepancy was sought to be explained by referring to a mutual settlement between the parties, yet nothing in this regard was stated in the complaint or during the course of leading evidence by the complainant. 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.

A bare perusal of the impugned judgment of acquittal would show that the learned trial Court considered each and every aspect of the matter before arriving at a judicious conclusion. The evidence brought on record was appreciated in the correct perspective. The relevant observations made by the learned trial Court in paras 14 and 15 of the impugned judgment, read as under:-

“Admittedly, complainant has proved cheque Ex C8, memo Ex C9 and legal notice Ex C10 on record but these documents does not prove the case of the complainant. It is settled principle that in a criminal case, the complainant has to establish beyond reasonable doubt his case against the accused therein as alleged in the complaint but not a case which is contrary to the one alleged in the complaint. Presumption under section 139 of Negotiable Instruments Act

does not extend to the existence of legally enforceable debt as on the date of cheque and existence of such debt is to be proved by the complainant beyond reasonable doubt like any other fact. It is also settled principle that accused in a criminal case need not to be prove his defence beyond reasonable doubt but the complainant has to prove his case beyond reasonable doubt. The case of the complainant is that accused took loan of Rs. 1,50,000/- from the complainant and the complainant has proved statement of account Ex C7 of accused. It may be mentioned here that statement of account ExC7 reflects that loan of Rs.1,50,000/- was advanced to the accused on 4.1.2003 and Rs.30,000/- was charged as finance charges. Statement of account Ex C7 further reflects that accused was liable to repay the loan amount in 15 equal installments of Rs.15000/-, per month which was to start from 4.2.2003 and loan was to be repaid by 4.1.2004. It is pertinent to mention here that in the statement of account Ex C7, complainant has charged Rs.2,18,700/- as interest on the loan amount on 30.11.2006 and Rs.850/- as Travelling and conveyance allowance charges, thereby, accused is liable to pay Rs.3,99,550/-. But, it is pertinent to mention here that if accused was liable to pay loan amount of Rs.3,99,550/- then why the complainant has claimed Rs.1,80,000/- only from accused. During the arguments, counsel for the complainant contended that accused had earlier agreed that he is ready to pay Rs.1,80,000/- but it is pertinent to mention here that the complainant neither in his

complaint nor in his evidence as well as in notice has stated that any kind of settlement was effected with the accused or liability of Rs.3,99,550/- was reduced to Rs.1,80,000/-. It is settled law that complainant must prove his own case against accused beyond reasonable doubt and by leading cogent and convincing evidence against the accused but the complainant has failed to prove his case against the accused. It is also not believable that if first installment of accused was due on 4.2.2003 and accused did not repay the loan amount for three years, then why the complainant firm had not issued any notice to the accused regarding non-payment of installments. Thus, mere statement of account Ex C7 as well as agreement Ex C4/A does not prove the case of the complainant. The complainant has also failed to prove that if loan was given in the year 2003, then how the accused is supposed to issue cheque in the year 2006 i.e. after gap of three years. Thus, complainant has concealed material facts from the court and he has not come to the court with clean hands. It is also pertinent to mention here that according to complainant loan was advanced to the accused on 4.1.2003, while the cheque was issued on 10.11.2006 i.e. after gap of 3 ½ years. Meaning thereby, the loan amount claimed by the complainant is time barred as there is limitation of three years for recovery of a debt. It is also pertinent to mention here that complainant has failed to prove that at which rate, complainant has charged interest on the loan amount nor rate of interest has been

incorporated in the agreement ExC4/A as well as in promissory note Ex C5. The contention of defence is that as complainant firm has charged interest on the loan amount, therefore, the complainant firm is supposed to prove money lending licence on record. It may be mentioned here that statement of account Ex C7 produced by the complainant reflects that interest Rs.2,18,700/- has been charged on the loan amount but the complainant has failed to prove money lending licence on record. Hence complaint is not maintainable.”

As a matter of fact, admissions and contradictions in the evidence of the complainant, are sufficient to hold that accused has not only probalised his defence but proved non-existence of a consideration through the complainant's evidence. Admittedly, complainant has proved cheque, memo and notice on record but these documents do not prove legal liability of the accused towards the complainant.”

A bare reading of the above-said observations made by the learned trial Court would show that the applicant-complainant has miserably failed to prove his case. Under these circumstances, it can be safely concluded that the present application moved by the applicant is misconceived and the same is liable to be dismissed, for this reason also.

During the course of arguments, learned counsel for the applicant failed to point out any patent illegality or jurisdictional error in the impugned judgment, so as to enable this Court to take a different view than the one taken by the learned trial Court. Further, it is the settled proposition

of law that whenever two views are possible, the view which goes in favour of acquittal, is to be followed by the courts. In this view of the matter, it is unhesitatingly held that the impugned judgment of acquittal is well justified on facts as well as in law and the same deserves to be upheld, for this reason as well.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of ***Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638***. The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in the case of ***Arulvelu's case (Supra)*** read as under:

In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court*

must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The

trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.”

The law laid down by the Hon'ble Supreme Court in Arulevlu's case (supra) has also been followed by a Division Bench of this Court in the case of **State of Haryana v. Aman Kumar and another 2012 (3) RCR (Cr1.) 330** and judgment dated 2.11.2012 passed by this Court in **CRM-A-284-MA-2011 (Baljeet Singh v. State of Punjab and others)**.

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 the present application is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant application stands dismissed.

12.03.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE