

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

**Criminal Revision No. 451 of 2013 (O&M)
Date of Decision: 5.10.2015**

M/s Premji Truck Finance Company Private Limited, New Basti,
Congress Bhawan Road, Ambala City, through its Director Shri Prem
Chand

.....Petitioner

Vs.

Parwinder Singh

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sanjay Jain, Advocate
for the petitioner.

Mr. Hardeep Singh, Advocate
for the respondent.

- 1. To be referred to the Reporters or not?**
- 2. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J.

Instant criminal revision petition is directed against the impugned judgment dated 22.8.2012 passed by the learned Additional Sessions Judge, Ambala, upholding the order dated 11.6.2010 passed by the Judicial Magistrate 1st Class, Ambala, whereby complaint of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short), was dismissed.

Briefly put, facts of the case, as recorded by the learned Additional Sessions Judge, in para 2 of the impugned judgment are that a complaint under Section 138 of the NI Act was filed by the

complainant alleging that he was running a business of finance for the last many years. The accused approached the complainant for financial assistance for a vehicle and his request was accepted by the complainant and got a vehicle bearing No. HR-37-6454 on hire purchase agreement of ₹2,88,000/- executed on 23.1.2002. The accused agreed to pay the said amount within 24 monthly instalments and he also agreed to pay the incident and delay charges. The accused failed to pay the instalment regularly and ultimately, in lieu of discharge of his liability against the outstanding amount, the accused issued a cheque No. 573953 of ₹3,20,000/- dated 24.11.2005 drawn at UCO bank Ambala City in favour of the complainant, with the assurance that same will be encashed on its presentation. However, when presented by the complainant, the said cheque was dishonoured by the bank with the remarks 'Insufficient funds' vide memo dated 23.12.2005. Thereafter, the complainant issued a legal notice dated 28.1.2006 to the accused through registered post, but neither he gave any reply to the notice nor he made the payment.

The complainant-respondent produced preliminary evidence and on perusal thereof, accused was summoned to face criminal trial for an offence punishable under Section 138 of the NI Act, vide order dated 3.3.2006 passed by the learned trial Magistrate. Pursuant to the summoning order, accused appeared in the Court. Notice of accusation was served upon the accused, vide order dated 13.10.2008, to which he pleaded not guilty and claimed trial.

With a view to prove his case, complainant examined Ram

Singh-Bank Official, as CW1, Sujan Kumar-Clerk, as CW2, Prem Chand-M.D. of the company as CW3, besides producing documentary evidence Ex.C1 to Ex.C10. All the incriminating evidence brought on record by the complainant was put to the accused, while recording his statement under Section 313 of the Code of Criminal Procedure ('Cr.P.C.' for short). Accused pleaded innocence and alleged false implication. Accused also opted to lead defence evidence. Accused examined as many as 4 DWS, besides tendering into evidence certain documents.

Having heard the learned counsel for the parties and after going through the evidence brought on record of the case, learned trial court came to the conclusion that complainant has failed to prove his case, bringing home guilt against the accused. Consequently, accused was acquitted of the charges framed against him, vide impugned judgment dated 11.6.2010. Feeling aggrieved, complainant-petitioner filed his appeal which also came to be dismissed by the learned Additional Sessions Judge, Ambala, vide impugned judgment dated 22.8.2012. Hence the present criminal revision petition.

Learned counsel for the petitioner submits that the complainant brought cogent and convincing evidence on record, which was sufficient to record conviction of the accused. However, since the learned courts below have failed to appreciate the evidence in correct perspective, the impugned judgments have resulted in miscarriage of justice. He prays for setting aside the impugned judgments, by allowing the present criminal petition.

Per contra, learned counsel for the respondent-accused submits that complainant has miserably failed to prove his case. No evidence worth acceptance was produced by the complainant before the learned courts. He further submits that both the learned courts have proceeded on a factually correct and legally justified approach, while passing their respective impugned judgments and the same deserve to be upheld. He prays for dismissal of the present criminal revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of both the impugned judgments would show that the learned courts below have discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at their judicious conclusions. Oral as well as documentary evidence was appreciated in the correct perspective. Having said that, this Court feels no hesitation to conclude that the learned courts have committed no error of law, while passing their respective impugned judgments of acquittal and the same deserve to be upheld.

It is a matter of record and not in dispute that the cheque in question was for an amount of ₹3,20,000/-. It is also a matter of record that the hire purchase agreement between the complainant and the respondent was for an amount of ₹2,88,000/-, and out of abovesaid amount of ₹2,88,000/-, complainant had received ₹1,53,500/- from the respondent. Once the complainant had received an amount of ₹1,53,500/- from the respondent, it does not appeal to reason that the respondent would still issue a cheque for ₹3,20,000/- to the petitioner.

When this specific query was put to the complainant by the learned trial court as to how an amount of ₹3,20,000/- was outstanding against the accused, the complainant took a complete somersault by saying that the said amount of ₹3,20,000/- also includes the compensation charges, however, there was no such clause in the hire purchase agreement, as admitted by the complainant himself. In this view the matter, it is unhesitatingly held that learned courts below committed no error of law, while passing their respective impugned judgments.

Further, in an enquiry on the complaint, complainant himself produced photocopy of the affidavit, whereby the respondent sold the said vehicle to one Sunil Kumar in the year 2003. Once the vehicle, which is the bone of contention, itself was sold way back in the year 2003, it casts a shadow of doubt whether the respondent actually issued a cheque to the complainant in the year 2005 or not. In this view of the matter, it can be safely concluded that complainant did not approach the court with clean hands and learned trial court

rightly granted the benefit of doubt to the respondent, acquitting him from the charges levelled against him and the said judgment was rightly upheld by the learned appellate court as well.

It is the settled principle of law that wherever two views are possible, the view which goes in favour of the acquittal, deserves to be adopted by the Courts. It is not even the argued case on behalf of the petitioner that the view taken by the learned trial Court as well as by the learned Additional Sessions Judge was not one of the possible views. In this view of the matter, it can be safely concluded that the impugned judgments of acquittal do not suffer from any illegality and the same deserve to be upheld, for this reason also.

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 (CrI.) 638**. The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in the case of Arulvelu (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 (Crl.) 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)**.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme

Court in **Arulvelu's** case (supra), it is unhesitatingly held that the learned Courts were well justified on facts as well as in law, for passing the impugned judgments of acquittal and the same deserve to be upheld, for this reason as well.

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

Resultantly, with the abovesaid observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

5.10.2015
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