

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.100 of 2012

....

Date of Decision:7.11.2016

Ashok Kumar Bhatia

...Petitioner

v.

Bhushan Piplani and another

...Respondents

.....

Coram: Hon 'ble Mr. Justice Inderjit Singh

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Present: Mr. Parminder Singh, Advocate for the petitioner.

Mr. Vikas Chopra, Deputy Advocate General, Haryana
for respondent No.2-State.

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Inderjit Singh, J.

The present criminal revision petition has been filed under Section 401 Cr.PC. challenging the impugned judgment dated 8.12.2011 passed by learned Sessions Judge, Ambala, allowing the appeal filed by complainant-Bhushan Piplani against the impugned judgment dated 23.10.2010 passed by learned Judicial Magistrate Ist Class, Ambala Cantt.

The criminal revision petition was admitted.

No one has put in appearance on behalf of respondent No.1-complainant. Mr. Vikas Chopra, learned Deputy Advocate General, Haryana has appeared on behalf of respondent No.2-State and contested this

revision petition.

I have heard learned counsel for the petitioner and learned Deputy Advocate General, Haryana and have gone through the record.

From the record, I find that Bhushan Piplani-complainant filed the complaint against Ashok Kumar Bhatia for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') read with Section 420 IPC.

The brief facts of the case as mentioned in the judgment dated 23.10.2010 passed by the Judicial Magistrate Ist Class, Ambala Cantt. are as under:-

“Brief facts as averred in the complaint are that the complainant as well as the accused were having good friendly relations. In the month of May, 2004, the accused had requested for friendly financial help of amount Rs.50,000/- which was required by the accused. Seeing his necessity and on the basis of friendly relations, complainant was prepared to help the accused and accordingly Rs.48,000/- was arranged by complainant through several sources and was given to the accused in cash. Accordingly, to pay back his legal debt i.e. payment towards friendly financial help, the accused issued a cheque No.2204821 dated 26.8.2004 for Rs.48,000/- with the assurance that the same shall be encashed at the time of presentation before the bank. Accordingly, the said cheque was deposited at Bank of India, Ambala City, but to utter surprise

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the same was dishonoured vide the accused banks memo dated 28.4.2004 with remarks “insufficient funds”. Thereafter, a legal notice dated 15.9.2004 through registered AD and UPC post dated 15.9.2004 was issued upon the accused through counsel of the complainant, but despite service of the legal notice the accused has failed to make the payment of the cheque amount. Despite that the accused did not pay the cheque amount. Finding on other alternative, the complainant instituted the present complaint.”

The learned Judicial Magistrate Ist Class, Ambala Cantt. vide the impugned judgment acquitted the accused of the notice of accusations served upon him. Aggrieved from this judgment, an appeal was filed by the complainant before the Sessions Court and the learned Sessions Judge, Ambala vide impugned judgment dated 8.12.2011 set aside the judgment passed by the learned Judicial Magistrate Ist Class and convicted and sentenced Ashok Kumar Bhatia under Section 138 of the NI Act and sentenced him to undergo rigorous imprisonment for one year and to pay a sum of ₹50,000/- being the amount of compensation. Aggrieved from this judgment, the present revision petition has been filed.

From the record, I find that as the present petitioner has been acquitted by the trial Court in a complaint case under Section 138 of the NI Act, therefore, the appeal against acquittal in a complaint case lies to the High Court after seeking leave to appeal. The Sessions Court has no powers to hear the appeal in acquittal in a complaint case. Therefore, the judgment

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of conviction and order of sentence passed by the learned Sessions Judge in the appeal filed by the complainant against the judgment of acquittal passed by the learned Judicial Magistrate It Class in the complaint case are illegal being not maintainable. Therefore, the judgment of conviction as well as the order of sentence passed by the learned Sessions Judge are set aside.

Finding merit in the criminal revision petition, the same is accepted. The accused is acquitted.

November 7, 2016.

**(Inderjit Singh)
Judge**

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No