

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

CRA-AS-146-2017 (O&M)

DATE OF DECISION : 12th SEPTEMBER, 2017

Kuldip Singh

.... Appellant

Versus

Kulwinder Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. G. S. Sirphikhi, Advocate for the applicant-appellant.

None for the respondent.

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A. B. CHAUDHARI, J. (ORAL)

CRM-2258-2015

Allowed as prayed for.

CRM-A-142-MA-2015

This is application for leave to appeal against the impugned judgment and order of acquittal.

Leave to appeal is granted.

Appeal be registered as appeal against acquittal, which is taken up for hearing today itself.

CRA-AS-146-2017

Despite service there is no appearance for the contesting respondent, the accused in the trial Court.

The appellant had filed a complaint under Section 138 of the Negotiable Instruments Act which was registered as Criminal Case No.190-A of 2007 in respect of dishonour of cheque in the sum of ₹5,00,000/-. The complaint was filed by the appellant through attorney Mr. Harpreet Singh son of S. Ram Singh. As per the procedure, Harpreet Singh got his verification statement recorded in the said complaint case

pursuant to which the trial Court issued process against the accused. The accused entered the appearance on receipt of the accused summons. The case was posted for trial. The appellant herein tendered evidence by way of affidavit which is placed as Annexure A-1 to this petition. I have gone through the said evidence by way of affidavit which is sworn in by Kuldip Singh, son of S. Piara Singh i.e. the appellant-complainant himself. There is no affidavit/evidence filed by the power of attorney and it appears that at the stage of the trial or recording of evidence the complainant himself got recorded his evidence and also faced the cross-examination. There was nothing wrong with this approach of the appellant-complainant nor there was any objection from the other side. On the contrary, he was cross-examined by the accused through his advocate and the cross-examination was completed. The trial Court thereafter rendered the judgment and the relevant portion from para 9 reads thus:

“9. To prove the point of determination, complainant did not step into the witness box himself, rather examined his attorney in preliminary evidence. Thereafter, attorney holder of the complainant did not come present to face cross examination, rather complainant himself appeared to face cross examination. He did not depose anything against the accused as his examination-in-chief had not been recorded, due to which his cross-examination is completely irrelevant to determine criminal liability of the accused. xxx.... xxx....”

Perusal of the record filed by the appellant with the present application shows that the statement in the judgment in para 9 that the appellant did not present himself for cross-examination, is contrary to the record as there is cross-examination which has been produced on record

after the examination-in-chief was recorded by way of affidavit. In the evidence on affidavit even the documents have been exhibited. Obviously, therefore, the aforesaid finding of fact is completely dehors the record and completely wrong. The Presiding Officer will have to explain all this.

In that view of the matter, the present appeal against acquittal must succeed. Hence I make the following order.

ORDER

- (i) Leave to appeal is granted
 - (ii) CRA-AS-146-2017 is partly allowed.
 - (iii) Impugned judgment and order dated 07.10.2014 is set aside.
 - (iv) The proceedings of criminal complaint are remanded to the trial Court for fresh hearing. The trial Court shall dispose of the same in accordance with law after issuing summons to the accused. The appellant to appear before the trial Court on 27.09.2017. The trial shall be held thereafter from the stage at which the evidence of the complainant was completed.
 - (v) The record, if any, be sent back to the trial Court forthwith.
 - (vi) The Presiding Officer, Ms. Amita Singh, PCS, SDJM, Batala to tender explanation within four weeks from today. Registry to act.
- Disposed of accordingly.

12th SEPTEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*