

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

CRA-AS-No.201 OF 2017
DATE OF DECISION :9TH NOVEMBER, 2017

Gurcharan Singh

.... Appellant

Versus

Davinder Singh

.... Respondent

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

* * * *

Present : Mr. Harsh Chopra, Advocate for the applicant-appellant.

Mr. Deepak Bhardwaj, Advocate for the respondent.

* * * *

A. B. CHAUDHARI, J. (Oral)

CRM-A-61-MA-2016

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

Rule.

Heard forthwith.

Leave to appeal is granted.

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

CRA-AS-No.201 OF 2017

Heard.

Admitted.

Taken up for hearing today itself in view of short controversy involved.

Learned counsel for the appellant submits that the trial Court committed an error in holding that statutory notice under Section 138 Negotiable Instruments Act was not served though as a matter of fact the same was duly served as required by law. He has cited the judgment of Apex Court in the case of ***C.C. Alvi Haji versus Palapetty Muhammed and another, 2007 (3) RCR (Criminal) 185.***

Learned counsel for the accused has vehemently opposed the present appeal and submitted that the finding recorded by the trial Court is based on judgment that has been relied upon by the trial Court. Therefore, no interference could be made in the appeal against acquittal. He submitted that the scope of appeal against acquittal is limited and therefore, the High Court is not in a position to interfere with the order of acquittal.

I have perused the interim order and the reasons given therein. Following is the relevant portion which I quote hereunder:

“14. The counsel for accused assailed the claim of complainant on the ground of non-service of legal notice upon accused. He stated that service of legal notice upon accused is one of the ingredient of offence and no conviction can be recorded in the instant complaint as complainant has failed to prove its service upon accused. In this regard he relied upon ***Sharanayya vs. Chandrakanth, 2014 (supp) CCC 559 (SC).***

Perusal of Ex. C6 provides that legal notice sent to accused demanding payment of money was

returned to sender as the addressee was not found at home. Thereafter, no fresh notice was issued by complainant demanding money from accused. Meaning thereby accused was never served with demand notice. After going through the authority I am convinced with the argument of Ld. Defence counsel that notice is one of the ingredient which constitute the offence under section 138 of Negotiable Instruments Act, 1881. Since complainant has failed to prove service of legal notice upon accused, therefore, this Court has no hesitation to hold that complainant has failed to prove commission of offence u/s 138 by accused. Resultantly, all these points are decided against the complainant and in favour of accused.”

In my opinion, the judgment in the case of *C.C. Alvi Haji (supra)* in particular paras 14 and 17 are applicable in the present case.

In that view of the matter, the appeal will have to be partly allowed since the trial Court did not decide the trial on merits.

Hence the following order is passed:

ORDER

- (i) The CRA-AS-No.201 OF 2017 is allowed.
- (ii) Impugned judgment and order dated 07.12.2016 passed by the learned Judicial Magistrate 1st Class, Rupnagar is quashed and set aside.

- (iii) The proceedings of this case are sent back to the trial Court for hearing and disposal on merits after giving opportunity to the rival parties.
- (iv) In view of the fact that the trial relates to the year 2014, the same shall be disposed of expeditiously in accordance with law.
- (v) The parties are directed to appear before the Court below on 18.12.2017.

9TH NOVEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No