

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

CRM-A-No.1247-MA OF 2014
DATE OF DECISION : 17th JANUARY, 2017

Punjab Agro Industrial Corporation

.... Appellant

Versus

Dinesh Kumar

.... Respondent

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

* * * *

Present : Mr. Sanjeev Roy, Advocate for the applicant-appellant.

Mr. Shiv Kumar, Advocate for the respondent.

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A. B. CHAUDHARI, J. (ORAL)

Heard learned counsel for the rival parties in the present appeal against acquittal.

The learned counsel for the applicant-appellant vehemently argued that the finding recorded by the lower appellate Court in para 19 for recording adverse inference merely because the District Manager namely Karam Chand was not examined and further Japinder Singh Bajwa, District Manager was examined without permission of the Court are clearly illegal. He further argued that the reasons given by the appellate Court in comparison to the reasons given by the trial Court are also not sound and are valid. He, therefore, submitted that the order of acquittal recorded by the lower appellate Court is required to be set aside by restoring the order of the conviction recorded by the learned trial Court.

Per contra, the learned counsel for the respondent-accused opposed the present appeal against acquittal had submitted that the complainant failed to produce any evidence regarding legally enforceable

liability, which is *sine qua non* for conviction of the accused under Section 138 of the Negotiable Instruments Act. According to him at least on the date of filing of the complaint there has to be legal enforceable liability which did not exist in the instant case. He then submitted that the issue was pending before the Arbitrator for resolution of the dispute between the complainant and the accused and the Arbitrator did not made any award on the date of filing of the complainant. He, therefore, urged this Court to uphold the judgment recorded by the lower Appellate Court.

The learned counsel for the applicant-appellant then fairly stated that now award has been passed against the respondent-accused to the extent of ₹69.66 lacs on 13.05.2004.

I have seen the reasons recorded by both the courts below. It is not in dispute that on the date of filing of the complaint under Section 138 of Negotiable Instruments Act, there was neither any award nor legal enforceable liability of the respondent-accused, arrived at by the competent court or even the Arbitrator. It also appears from the evidence on record so also from the reasoning adopted by the Courts below that the cheque was given by the accused to the appellant/complainant by way of security during the routine course of business transaction between them. In that view of the matter, I think there is merit in the submissions made by learned counsel for the respondent-accused that there was no legal enforceable liability against the accused.

In that view of the matter, I think the judgment and order of acquittal made by the learned lower Appellate Court is legal, sound and correct. Insofar as the reasons given by the lower Appellate Court in para 19 are concerned, I think the counsel for the applicant-appellant is right in criticizing the said reasons. Reasons recorded in para 19 are clearly wrong and illegal. There is no reason to either draw adverse inference

because Karam Chand the person who had filed the complaint was not examined nor there is any reason that the other District Manager was examined, could not be relied upon as he was examined without permission from the Court. The reasons are absurd and therefore I hold accordingly.

Be that as it may, from the reasons given by me above, the order of acquittal recorded by the lower appellate court will have to be upheld. At any rate the appellant is lucky enough to get the award from the Arbitrator which is one of the reason for not entertaining the present appeal against acquittal.

In the result, the present appeal against acquittal is dismissed.

17th January, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No