

**In the High Court of Punjab and Haryana at Chandigarh**

CRM-A-1599-MA of 2015 (O&M)

Date of decision: September 21 , 2017

Rajesh and Company

.....Applicant

Versus

Parmodh Kumar and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr.Parveen K.Kataria, Advocate for the applicant

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**ARVIND SINGH SANGWAN, J.**

Respondent-Parmodh Kumar had faced trial in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 qua dishonour of cheques. Trial Court, vide order dated 4.3.2015, ordered the acquittal of the respondent. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.

Brief facts of the case as per complaint are that the accused had business dealing with complainant since long and complainant supplied goods to firm M/s Deena Bandhu Textile on credit basis, however, accused had been making payment for those goods from his another proprietorship concern M/s Parmodh Kumar & Sons. The accused, who is proprietor of Deena Bandhu Textiles as well as Parmodh Kumar & Company, in order to discharge his partial debit/legal liability, had issued five cheques i.e. Cheque bearing No.

110906 dated 18.5.2011 for Rs.10,000/-, No. 110907 dated 23.5.2011 for Rs.10,430/-, No.110873 dated 12.3.2011 for Rs.12,244/-, No. 110791 dated 28.1.2011 for Rs.15000/- and cheque No. 110905 dated 14.5.2011 for Rs.10,000/-, all drawn on Bank of India, Mall Road, Amritsar, in favour of complainant. At the time of issuing said cheques, accused assured the complainant that the said cheques, upon presentation, shall certainly be encashed. On the assurance of accused, complainant presented the said cheques for its clearance with its banker namely Canara Bank, D.S.Market, Amritsar, but the same were dishonoured with the remarks "Exceeds Arrangement" vide respective memos dated 22.7.2011. Thereafter, complainant served the accused with legal notice dated 26.7.2011 through Registered post but despite the service of legal notice, accused has failed to make the payment to complainant till date. Hence, the present complaint is filed under Section 138 of the Negotiable Instruments Act, 1881(for brevity `the Act').

After the preliminary evidence was recorded, the respondent was summoned to face trial and, thereafter, pre-charge evidence was led.

The applicant appeared as CW1 and tendered his affidavit Exhibit CW1/A and deposed in support of his complaint. Applicant also produced on record various documents i.e. original cheques-Exhibit C1 to C5, bank memos-Exhibit C6 to C11, legal notice, postal receipt, envelope and bills-Exhibits C12 to C20 and

closed his evidence.

After the statement of the accused was recorded under Section 313 Cr.P.C., in which he denied the allegation and pleaded innocence, the case was fixed for the defence evidence.

Respondent-accused in his defence produced DW1 Rakesh Sharma, Record Keeper of J& K Bank, who produced the bank record relating to the account which was in the name of M/s Deena Bandhu Fabric/ Textile (for short 'Textile'). This witness proved that, as per this account, Pardeep Kumar is proprietor and, at the time of opening of the account, Pardeep Kumar has submitted his Pan Card and Ration Card. This witness has further proved the statement of account as Exhibit D1 and other documents, submitted by Pardeep Kumar, at the time of opening of bank account, as Exhibits D2 to D6.

Respondent-accused himself appeared as DW2 and submitted that he had no transaction with the complainant firm, namely, M/s Rajesh and Company and he had business dealing only with M/s Ganpati Fabrics which is a proprietorship concern of the son of the complainant. He also submitted that the cheques in questions were submitted to the proprietor of M/s Ganpati Fabrics and son of the complainant handed over the cheques to his father, who misused the same by filling the name of his concern M/s Rajesh and Company with whom the accused had no business transaction. Similarly, he had no transaction with the Textile.

DW3 Narvinder Singh and DW4 Rakesh Kapoor deposed that accused- Parmodh Kumar is doing the business of clothes in a shop situated at Sobha Ram Market, Amritsar under the name and style of *Parmodh Kumar and Company* and he is a sole proprietor of the concern and the accused is neither a proprietor nor has any concern with 'Textile'. Thereafter, the respondent-accused closed his evidence.

The trial Court framed a contentious point as to whether the cheque in question were issued by accused in discharge of his legal enforceability debt/liability. The trial Court, thereafter, dismissed the complaint vide judgment dated 4.6.2015. The operative part of the judgment reads as under:-

“Presently, the case of complainant is that accused proprietor of two separate concerns namely, Parmodh Kumar & Company and Deena Bandhu Textiles and that in discharge of the legal liability of his proprietorship concern Deena Bandhu Textiles, accused has issued cheques in question in favour of complainant from his bank account being maintained by him in the capacity of being proprietor of concern Parmodh Kumar and Company. Now, in order to reach the conclusion that accused has issued the cheques in question in discharge of his liability i.e. the liability of concern Deena Bandhu Textile, firstly it is to be established on record that the concern Deena Bandhu Textiles belongs

to accused Parmodh Kumar. The accused has denied being proprietor of the concern Deena Bandhu Textiles. In support of said denial, accused has examined Sh.Rakesh Sharma, Record Keeper from J&K Bank, Branch Shastri Market, Amritsar as DW1, who has brought the bank record pertaining to concern Deena Bandhu Fabrics/Textiles having account no. 0056010100004710. He has proved on record the account opening form of said concern as Ex.D2, photo copy of ration card of the account holder as Ex.D3, proprietorship letter as Ex.D4, cheque collector letter as Ex.D5 and statement of account for the period 1.4.2008 to 9.12.2013 as Ex.D6. In his examination in-chief, while deposing as per bank record produced by him, he has stated that as per account opening form of account No. 0056010100004710 in the name of Deena Bandhu Fabrics/Textiles, the proprietor of said concern is Pardeep Kumar. Besides, this, accused himself stepped in to the witness box as DW2 and in his examination in chief by way of affidavit Ex.DW2/A has categorically denied of his being proprietor of concern Deena Bandu Textile. DW3 Narvinder Singh and DW4 Rakesh Kapoor have also stated that they are doing the work in the Shastri market and they know accused Parmodh Kumar personally who is doing the business of clothes in a shop situated at Sobha Ram

Market, Shastri Market, Amritsar, under the name and style of Parmodh Kumar & Company who proprietor he is. Parmodh Kumar is not concerned in any way with concern Deena Bandu Fabrics/Textiles as neither he is proprietor nor partner of the said concern. Now with the documentary evidence proved on record by DW1 and ocular testimonies of DW3 and DW4, it has been quite clearly established on the record that accused is not related to the concern Deena Bandu Fabrics/Textiles in any manner and that the proprietor of said concern is one Pardeep Kumar. On the other hand there is no evidence adduced by complainant which can prove that accused is proprietor of the concern Deena Bandu Fabrics/Textiles. Now this fact has struck hard on the complaint and it is fatal for the case of complainant as the liability of the proprietorship concern for which the cheques in question are alleged to have been issued by accused does not belong to him. With this, it has also been established on record that accused has no liability of his own towards the complainant concern.

15. Further, the court is not oblivious of the law that the drawer of the cheque is responsible under Section 138 of NI Act even if he has issued the same in discharge of the liability of some third person and not of his own. However, presently, neither it is pleaded case of the complainant that

the accused has issued the cheques in question to discharge the liability of third person i.e. Proprietor of concern Deena Bandu Fabrics/Textiles nor there is any evidence to that effect. Therefore, the liability under Section 138 of NI Act cannot be fastened upon accused in that manner too.

16. Learned counsel for complainant further argued that even if, for argument sake, it be presumed that there was no liability of accused himself towards complainant, being in no way concerned with the concern Deena Bandu Fabrics/Textiles, then the question arises as to why the accused has issued the cheques in question in favour of complainant concern namely Rajesh & Company. The argument raised by learned counsel for the complainant is relevant as if accused has no liability towards complainant concern being not related to concern Deena Bandu Fabrics/Textiles and if he has not issued the cheques in question to the complainant concern in discharge of any liability, then how the complainant concern Rajesh & Company came into the possession of the cheques in question. But this question has not been left unexplained by the accused. In this regard, accused has raised his defence version to the effect that he had business transactions with the concern Ganpati Fabrics which is a

proprietorship concern of the son of complainant and the cheques in question with blank payee columns were issued to him who has handed over the same to his father i.e. Present complainant Rajesh Tandon who misused the same by filling the name of his concern "Rajesh & Company" in the payee column. CW1 complainant Rajesh Tandon, when cross-examined has admitted certain facts in this regard. During his cross-examination he has admitted that Ganpati Fabrics is also his firm whose proprietor is his son namely Karan Tandon. He further stated that both the firms i.e. complainant firm and concern Ganpati Fabrics operates business from one and same shop situated in Bazar Kaathia, Amritsar. He has further admitted that accused concern Parmodh Kumar & Company is having business dealings with the concern Ganpati Fabrics. Thus, aforementioned admissions on the part of CW1 complainant renders the defence version of accused probable, particularly in the backdrop of the fact that accused himself has no legal liability towards the complainant.

17. Thus, under these circumstances, it can be safely said that by way of leading positive evidence and by relying upon the material brought on record by the complainant, accused has successfully rebutted the presumption under Section 139 of N.I. Act and the complainant has failed to prove that

the charges in question were issued by accused in discharge of the legally recoverable debt/liability. Accordingly, the first and sole points of contention is determined in favour of accused and against the complainant.”

Learned counsel for the applicant has submitted that once the complainant has admitted his signatures on the cheques, the trial Court should have drawn a presumption under Section 138 of the Act and has wrongly dismissed the complaint. Learned counsel for the appellant has also relied upon the judgment of the Apex Court in **M/s Mandvi Co-op Bank Ltd. vs. Nimesh B. Thakore SLP No. 3915 of 2016** wherein it has been held as under:-

“There are two errors apparent in the reasoning of the High Court. First, if the legislature in their wisdom did not think "it proper to incorporate a word 'accused' with the word 'complainant' in [section 145\(1\)](#).....", it was not open to the High Court to fill up the self perceived blank. Secondly, the High Court was in error in drawing an analogy between the evidences of the complainant and the accused in a case of dishonoured cheque. The case of the complainant in a complaint under [section 138](#) of the Act would be based largely on documentary evidence. The accused, on the other hand, in a large number of cases, may not lead any evidence at all and let the prosecution stand or fall on its own evidence. In case the defence does lead any evidence, the nature of its evidence may not be necessarily documentary; in all likelihood the defence would lead other kinds of evidences to rebut the presumption that the issuance of the cheque was not in the discharge of any debt or liability. This is the basic

difference between the nature of the complainant's evidence and the evidence of the accused in a case of dishonoured cheque. It is, therefore, wrong to equate the defence evidence with the complainant's evidence and to extend the same option to the accused as well. “

There is no dispute about the proposition of law. However, the same is not applicable in the present case as the applicant-complainant as well as respondent-accused have led their respective evidence in accordance with law and there is no dispute that they were afforded proper opportunities to lead their evidence. The arguments raised by the applicant that the respondent-accused has, in fact, issued the cheques to discharge the liability due towards the applicant is not proved on record except the self serving statement of the complainant, who appeared as CW1. No other independent evidence has been led by the complainant that the accused had any business dealing with the complainant concern M/s Rajesh and Company.

On the contrary, accused has led sufficient evidence to prove that he is a sole proprietor of the firm M/s Pardeep Kumar and he had issued the cheque to the firm, namely, M/s Ganpati Fabrics, which is proprietorship concern of the son of the applicant. The accused has also led independent evidence in the shape of the testimony of DW1, an official of J&K Bank where the accused was maintaining his bank account from which the cheque was issued. He also examined DW3 Narvinder Singh and DW4 Rakesh Kumar to

prove that the accused is involved only in the business of clothes under the name and style of M/s Parmodh Kumar and Company and had no dealing with applicant-Textile.

Thus, the trial Court has rightly held that neither the complainant has pleaded in his complaint that the accused has issued the cheque in discharge of his liability of third person with the proprietor of concern 'Textile' nor there is any evidence, in support thereof. It has come in the statement of the complainant himself that M/s Ganpati Fabrics is the proprietorship firm of his son, namely, Karan Tandon and that the accused concern was having business dealing with the concern M/s Ganpati Fabrics. Therefore, the version given by the accused is more probable that he has no existing legal liability towards the complainant-'Textile'.

It has been held by a Division Bench of this Court in **Anil Kumar v. State of Punjab and others, CRA-D-531-DB of 2015**, while dealing with an appeal against acquittal, that order of acquittal interfered with only when there are compelling and substantial reasons for doing so i.e. when the order was clearly unreasonable. There were also no compelling and substantial reasons to interfere with the findings recorded by the trial Court and the trial Court has rightly taken into consideration all the material brought on record.

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3**

**SCC 755 and in Chandrappa v. State of Karnataka, (2007) 4 SCC 415.**

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it

is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

In the facts and circumstances, the reasons recorded by the learned trial Court in acquitting the accused are just and proper and there is no merit in the criminal miscellaneous application seeking leave to appeal in terms of Section 378(4) of the Code Criminal Procedure, 1973. Accordingly, the criminal misc. application seeking leave to appeal is dismissed.

**(ARVIND SINGH SANGWAN)**  
**JUDGE**

**September 21,2017**

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Whether speaking/reasoned: Yes

Whether Reportable: Yes