

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-495-MA-2014 (O&M)
Date of decision: October 12, 2017

Surjit Singh

.....Applicant

Versus

Harmeet Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.S.S.Joshi, Advocate for the applicant
Mr.K.S.Chahal, Advocate for the respondent.

ARVIND SINGH SANGWAN, J.

Respondent-Harmeet Singh had faced trial in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short) qua dishonour of cheque dated 15.9.2007 in the sum of ₹ 2,00,000/-. The trial Court, vide order dated 10.4.2012, ordered the acquittal of the respondent. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) for grant of leave to appeal.

Brief facts of the case are that the petitioner filed a complaint with the allegation that in the month of October, 2006, he had paid an amount of ₹8,00,000/- to respondent-accused along with his passport, ration card and birth certificate as the accused has promised to send the complainant to South America within 15-20 days. However, accused demanded another sum of ₹3,00,000/- which was paid by the father of the complainant. However, when the accused could not send the complainant

to abroad, he issued seven post dated cheques of ₹ 11,00,000/- in favour of the complainant. The cheque in dispute dated 15.9.2007, for a sum of ₹2,00,000/-, which was presented by the complainant with the Bank and the same was returned with the remarks “account closed” vide memo dated 12.2.2006. Thereafter, the complainant issued a notice on 27.2.2008 and despite receiving the notice, the accused failed to re-pay the amount and, accordingly, the complaint was filed.

In the preliminary evidence, the Power of attorney of the complainant, namely, Surjit Singh was examined as CW1 and one Rakesh Kumar appeared as CW2. In the statement of the complainant, Surjit Singh by way of affidavit, Exhibit CW1/A, deposed on the line of the complaint and produced on record the original cheque, Exhibit C1, receipt, Exhibit C2, legal notice, Exhibit C3 and Postal receipts, Exhibits C4 to C6.

CW2 Rakesh Kumar, Accountant of firm M/s Hans Raj and Sons, New Grain Market, Sangrur produced the statement of accounts of Chamkaur Singh and Surjit Singh for the period from 1.4.2006 to 31.3.2007 as Exhibits CW2/A and CW2/B. Thereafter, the complaint was filed and the respondent was summoned in the pre-charge evidence.

After the evidence of the appellant was closed, the statement of respondent-accused was recorded under Section 313 Cr.P.C. in which he denied all the incriminating evidence against him and pleaded false implication.

After hearing the learned counsel for the parties, the trial Court vide its judgment dated 10.4.2012 dismissed the complaint. The operative part of the judgment reads as under:-

"12. After appreciating the evidence it is clear that complainant has not brought any evidence on the record to show that he had the capacity to pay such a huge amount of Rs.11 lacs to the accused. It has been alleged by the complainant that he and his father is having landed property and earning Rs. 15 lacs per year from the crops but no evidence has been brought on record to prove this fact. In his cross-examination he has stated that he borrowed money from commission agent with whom he used to sell the crops on interest at the rate of 1½ per month but no writing or document to this effect has been brought on the record. It does not seem convincing that a Commission agent had given him such a huge amount without any security or any writing. Further more, there is no evidence to prove the fact that he is selling crops to the tune of Rs15 lacs every year. There is no evidence to prove that he is having a good bank balance. It is further stated by the complainant In his cross-examination that he also borrowed some of the money from his relatives for the purpose of giving the same to the accused but again there is no supporting evidence to his bald statement in this regard. It is further important to mention here that the complainant even did not turn up for his remaining cross-examination. So, even otherwise his testimony remained incomplete. So the defence counsel lost the opportunity to cross-examine him further and failed to check his veracity. The complainant examined Surjit Singh his father as he himself did not appear for further cross

examination. Surjit Singh has been cross examined at length by the learned defence counsel. From the cross-examination of both these witnesses, material contradiction has come to light. Complainant Chamkaur Singh has alleged that he paid the amount to the accused, whereas, Surjit Singh has alleged that amount was paid by him. It is also come in evidence that Surjit Singh was in jail in a murder case. The amount was paid to the accused allegedly in October,2006. It is admitted by complainant Chamkaur Singh that in the month of October,2006, his father was in jail, but Surjit Singh his father has stated that he came out of the jail either in October or November,2006. Regarding the alleged payment, again there is a contradiction In the testimony of both these witnesses. Chamkaur Singh has stated that the amount was paid at Sangrur, whereas, Surjit Singh has stated that it was paid at Sunam. So, this contradiction has created a doubt in the mind of the Court regarding the case of the complainant and this Court is of the opinion that it is not safe to rely the testimonies of these witnesses.

13.In order to prove the fact that the complainant took money from his commission agent for the purpose of giving the same to the accused complainant has examined Rakesh Kumar Accountant working with M/s Hans Raj and Sons Commission Agent who brought the statement of account of complainant Chamkaur Singh and Surjit Singh his father. From the perusal of these documents ExCW21A and ExCW21B on the record,it is clear that there is no

entry of borrowing any money from commission agents. Moreover this witness has clearly stated in his cross examination that in the year 2006 Chamkaur Singh sold crops to the tune of Rs.2,13,525. 18 paise and on 1.2.2007, Chamkaur Singh took a loan of Rs.20,000/-. Except this no other amount was taken by Chamkaur Singh. Cost of crop of Surjit Singh for the year 2006 was amounting to Rs.2,76,737.58 Paise and Surjit Singh had taken this much amount as payment of crop upto 29.3.2007. Except this, no other amount was taken by him. From the cross examination of this witness, it is amply clear that no loan was taken by the complainant or his father as alleged by them for giving the same to the accused and it has falsified the stand of the complainant that he took loan from his commission agent on interest for paying the same to the accused.

14.From the above discussion, it is made out that the complainant has failed to prove that he had the capacity to pay such a huge amount at the relevant time which is fatal to his case. Although, there is a presumption U/s 139 of the Negotiable Instruments Act that there is always presumption in favour of the holder of the cheque that it has been issued by the accused in discharge of legal liability unless the contrary is proved. The accused can prove by leading positive evidence that the cheque in question was not issued by him in discharge of legal liability or he can establish the same from the evidence led by the complainant himself. In the present case, although, no witness has been examined by the

accused in his defence to prove this fact, but from the cross-examination of the complainant as well as his father Surjit Singh, it is clearly made out that they were not capable of paying the alleged amount. Thus, it has made the case of complainant doubtful and as per settled principle of law that if there is any doubt in the case of the prosecution/complainant, it is always extended to the accused. The Hon'ble Bombay High Court and Hon'ble Karnataka High Court has held in various cases that if the complainant is not in a position to lend a huge amount and that too without any interest it leads to the inference that the cheque in question was not issued in discharge of legal liability and there does not arise any question drawing the presumption as envisaged U/s 139 of the Negotiable Instruments Act. This Court find support in this regard from the following judgments: **Shiva Murthy Versus Amruthraj 2009 Civil Court Cases 160 (Karnataka)**, **B.Girish Versus S.Ramaia, 2011 (4) Civil Court Cases 338 (Karnataka)** and **Rosa Maria Fernandes Versus Nauso N.Kepkar 2010 Civil Court Cases 288 (Bombay)**.

15. So, in view of the aforesaid discussion, this Court reaches the conclusion that complainant has failed to prove his case against the accused beyond any reasonable doubt. Hence, the accused is hereby acquitted of the charges levelled against him. File be consigned to the record room.”

It is argued on behalf of the appellant that the complainant as

CW1 has proved that he has paid an amount of ₹11,00,000/- in two

instalments to the accused which was not returned and he has proved from the statement of CW2 that he was having sufficient income to advance the amount. It was also submitted that the cheque, which bears the signature of the accused person, was dishonoured and, therefore, the respondent-accused has failed to discharge his legal liability qua which the cheque was issued.

I have heard the learned counsel for the applicant and find no merit in the present appeal.

Firstly, it has come in the evidence that the cross-examination of CW1 was never completed as the complainant never appeared for completion of his remaining cross-examination and, as such, the evidence of complainant, who appeared as CW1, in the absence of complete cross-examination cannot be read in evidence. More so, the complainant has failed to prove that he or his father- Chamkaur Singh had enough earning to advance a loan of ₹15,00,000/- from their agricultural income.

From the perusal of the statement of CW2 Rakesh Kumar, Accountant of Commission Agent along with documents, Exhibits CW2/A and CW2/B, it is clear that there is no entry of borrowing any money from the said commission agents. In cross-examination, this witness has stated that in the year 2006, Chamkaur Singh sold the crop for a sum of ₹2,13,525.18 and has taken a loan of ₹20,000/- and the crop of Surjit Singh was sold for a sum of ₹2,76,737.58. Thus, no independent evidence has been led by the complainant, firstly, to prove that such a huge amount was paid to the accused person by raising a loan or from any other source of income. Secondly, no witness has been examined to prove that such amount was handed over to the accused person.

Their lordships of the Supreme Court in **Sudha Renukaiah and others vs State of UP, 2017(2) RCR (Criminal) 693**, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

It has been held by a Division Bench of this Court in **Anil Kumar vs. 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 vs. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others vs. 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

October 12,2017
arya

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

