

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 20 of 2017**

Dharam Das Meghani, S/o Late Sugnamal Meghani, Aged About 63 Years, Proprietor Jai Ambe Agro Industries, Gudiyari, Police Station Gudiyari District- Raipur (C.G.)

---- Appellant

Versus

Ram Gupta @ Ramchandra Gupta, S/o Chote Lal Gupta, R/o A/ 51, Dhebar Steel City, Avanti Vihar (Gayatri Nagar), Behind Jagannath Temple, Police Station Telibandha, Tehsil and District- Raipur (C.G.)

---- Respondent

For Appellant : Mr. Abhishek Vinod Deshmukh, Advocate.

For Respondent : Mr. Ajay Mishra, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

09/10/2018

1. This acquittal appeal is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against judgment dated 30.11.2016 passed by Judicial Magistrate First Class, Raipur (C.G.) in Complaint Case No. 919/2013, wherein the said court acquitted the respondent for commission of offence under Section 138 of the Negotiable Instrument Act, 1881.
2. As per case of the appellant, he is engaged in manufacturing of Craft Boards & Grey Boards and for the said purposes, the appellant has the RTGS facility for making e-payments for transferring money. The facility of RTGS is used by one Vikas Chandak, who is accountant of the appellant, who transferred a total sum of Rs. 3,71,610/- in the account of the respondent using RTGS facility and the said amount was used by the respondent. Cheques were issued in favour of the appellant by

the respondent which was dishonored and that is why complaint was filed before the trial court.

3. Learned counsel for the respondent submits that he has transferred Rs. 2,00,000/- in the account of Vikas Chandak and again, he has given Rs. 1,00,000/- in cash to Vikas Chandak and the whole amount is repaid by him, therefore, he cannot be compelled to pay the amount twice that has to pay again to the present appellant.
4. In the present case, the only material witness is Vikas Chandak who made transaction from the account of appellant and as per version of the respondent in whose account money was deposited by him, therefore, without examining Vikas Chandak, the issue between the parties cannot be settled.
5. The trial court recorded its finding on the basis that amount is returned to Vikas Chandak, but Vikas Chandak is not entered into witness box, therefore, the issue requires reconsideration after examining Vikas Chandak.
6. In view of the above, the order passed by the trial court is set aside by allowing the appeal. The trial court is directed to issue summon to Vikas Chandak as witness and after examination of Vikas Chandak, will decide the issue afresh.
7. It is directed that the parties shall appear before the trial court on 27th November, 2018 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge