

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

CRA-S-258-SBA-2005

DATE OF DECISION : 16th JANUARY, 2018

Deepak Jain

.... Appellant

Versus

Vikram Bhatia @ Vikki

.... Respondent

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

* * * *

Present : Mr. Apoorv Sangwan, Advocate for
 Mr. S. S. Dinarapur, Advocate for the appellant.

None for the respondent.

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A. B. CHAUDHARI, J.

The appellant has filed the present appeal being aggrieved by judgment and order dated 24.07.2004 passed by learned Judicial Magistrate Ist Class, Jagadhri, by which the learned trial Judge recorded the order of acquittal of respondent-Vikram Bhatia @ Vikki in criminal Complaint No.192 of 1995 and thus dismissed the complaint under Section 138 of Negotiable Instruments Act (in short, NI Act) filed by the appellant-complainant, for dishonour of cheque in the sum of ₹70,000/-.

In support of the appeal the learned counsel for the appellant has argued that the judgment recorded by the trial Court is completely perverse and contrary to the record. He submitted that the findings recorded by the trial Court are not based on evidence and on the contrary, the learned trial Judge recorded the facts and depositions on record in contradictory manner. He then submitted that the appellant had issued a

statutory notice under Section 138 of the NI Act to which no reply was given by the respondent-Vikram Bhatia @ Vikki nor any defence was taken at any point of time. Not only that respondent Vikram Bhatia did not even enter the witness box in his defence to testify his defence if any nor did he denied his signatures on the cheque. In the absence of these materials the trial Court was not at all justified in recording the reasons about the alleged defence of the respondent that the cheque did not bear signature of the respondent or that he was not partner with the firm or that there was a partnership firm and so on so forth. The judgment made by the trial Court is clearly based on figment of imagination and has thus resulted in miscarriage of justice to the complainant, though the complainant proved his case to the guilt. The learned counsel for the appellant took me through the entire documentary as well as oral evidence in support of his submissions.

None appeared for the respondent though served. This Court thus proceeds to decide the appeal in the absence of the respondent.

I have perused the entire record oral as well as the documentary evidence with the assistance of learned counsel for the appellant. It is not in dispute that the appellant had duly proved all the documents filed by him on record which I have checked up from the record and therefore, I find it convenient to reproduce ground No.6 of the appeal regarding the documents as under:

“6. That in order to prove his case, the appellant examined S. K. Gupta as CW1, who has proved cheque Ex. C1, endorsement Ex.C2 and Ex.C3. Raj

Kumar Kamboj was examined as CW2, who has deposed that on 28.11.94 Deepak Jain presented a cheque bearing no.0332522 for Rs.70,000/-, which was dishonoured by the bank due to insufficient funds and proved copy Ex. C5, voucher Ex.C-7, Deposit slip Ex.C6. The present appellant examined himself as PW3 and proved cheque Ex.C1, deposit slip Ex.C2, endorsement Ex.C3, notice Ex. C8, envelopment Ex.C10, reply Ex.P9. Satish Kamboj was examined as CW4, who has proved postal receipt Ex. C11, envelop Ex. C10, reply Ex.C9.”

The appellant had also entered into witness box before the trial Court and deposed about the signature of respondent-Vikram Bhatia on the cheque and had also examined PW-3 Deepak Jain, who stated on oath before the trial Court that the cheque was issued by Vikram Bhatia respondent and he had made signatures on the cheque in his presence. The evidence of the witness clearly shows that the complainant proved his case beyond any doubt and obviously the presumption under Section 139 NI Act arises in favour of the holder of the cheque namely the complainant. The respondent-Vikram Bhatia could have rebutted the presumption by replying the statutory notice that was served on him regarding signature or the partnership etc. but he did not give any reply. The respondent could have entered the witness box to rebut the presumption but he did not do so. Even in the statement under Section 313 Cr. P. C., except denying the evidence the respondent did not take any specific stand before the trial Court. It was thus easy for him to

simply deny the case of the complainant but then by voluminous documents as well as oral evidence the complainant proved his case and therefore, in my opinion the trial Court completely erred in recording findings which are contrary to the evidence on record.

For example in para 8 of the judgment the trial Court has stated that Ex.D-1 was admitted by CW-1 S. K. Gupta, showing that Vikram Bhatia was not partner in the firm. This is found nowhere in the evidence of DW-1. The trial Court has further stated that from the beginning respondent was saying that he was neither the partner of the firm nor has any concern with the same. Admittedly, the respondent did not reply the statutory notice nor examined himself to say all this. The further observation in the same paragraph is that the complainant did not say that the cheque was signed by him, is again completely wrong if the evidence of CW-3 Deepak Jain is seen. Even the cheque shows the signature of respondent. The trial Court thus straightaway draws the inference that the cheque was not signed or issued by him when the cheque was duly proved to be issued by Vikram Bhatia @ Vikki. Thus the judgment by the trial Court is completely wrong on facts and must be set aside.

As a sequel of the above, the appeal must be allowed. In the result I make the following order:

ORDER

- (i) CRA-S-258-SBA-2005 is allowed.
- (ii) The impugned judgment and order dated 24.07.2004 passed by learned Judicial Magistrate Ist Class, Jagadhri, is set aside.

- (iii) The Complaint No.192 of 1995 is allowed and respondent shall make payment of cheque amount namely ₹70,000/- and further amount of ₹70,000/- i.e. total amount of ₹1,40,000/- to the complainant, within a period of three months from today.
- (iv) In default of payment of the aforesaid amount of ₹1,40,000/- the respondent-accused shall undergo sentence of 1 year rigorous imprisonment.

16TH JANUARY, 2018
‘raj’

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>