

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

CRM-A-152-MA-2018 (O&M)

Date of decision : 12.12.2019

Ashok Kumar

...Applicant/appellant

Versus

Nitin Kumar Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. R.S. Budhwar, Advocate for the applicant/appellant.

Mr. Dinesh Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J.

Leave to Appeal has been sought against judgment of acquittal passed by learned Court of Judicial Magistrate Ist Class, Yamuna Nagar while dismissing complaint filed under Section 138 of Negotiable Instruments Act, 1881.

Criminal prosecution was launched on filing of the complaint alleging dishonour of cheque bearing No.134412 dated 25.09.2013 for an amount of ₹5,00,000/- drawn on HDFC Bank Limited, Yamuna Nagar which on presentation was dishonoured and in spite of notice, payment was not made. It may be noted here that during the pendency of the criminal complaint, a settlement was arrived at between the parties. The aforesaid settlement is in fact referring to settlement between appellant-Ashok Kumar, respondent-Nitin Kumar Gupta and Sat Parkash (non party to the present

proceedings). It has been recorded therein that with the intervention of the respectables, Nitin Kumar-the respondent has agreed to pay a sum of ₹5,00,000/- to Ashok Kumar and Sat Parkash for which a post dated cheque has been issued. It was also agreed that parties would get the cases settled on that basis.

It has also come on record that Sat Parkash has also filed a separate complaint against respondent-Nitin Kumar Gupta.

The execution of the aforesaid settlement is not disputed by any of the party. Now, the accused-respondent has taken a stand that account of appellant herein i.e. Ashok Kumar has been settled and he has been handed over certain receipts for ₹2,85,000/- and the appellant on the basis thereof has already recovered the aforesaid amount from the market whereas respondent has paid a sum of ₹1,00,000/- to Sat Parkash.

It may be noted here that appellant, respondent as well as Sat Parkash are working in Timber market as Timber Merchants. Since the alleged settlement is between the three parties and respondent has acknowledged that total payment of ₹5,00,000/- is to be paid to the appellant and Sat Parkash, therefore, this Court has to now examine the evidence.

Ashok Kumar-appellant while deposing in the Court has submitted that the amount was paid to the respondent-accused in the presence of Sat Parkash in two different occasions and Sat Parkash was made liable for repayment if Nitin does not repay. Thus, involvement of Sat Parkash in the entire transaction is apparent. Appellant further states that he is an income tax payee but he has not reflected this amount in the income

tax records. When evidence of Sat Parkash is carefully scrutinized, he admitted that in his presence, the appellant had never paid any amount to the accused. He only states that in his presence, accused had handed over the cheque in question. Thus, the evidence of the two witnesses examined by the prosecution is contradictory. On the one hand, appellant makes a positive statement that the payment was made to the accused-respondent in the presence of Sat Parkash, a commission agent and Sat Parkash was made responsible for return of the same whereas Sat Parkash denies that any payment was paid to the accused-respondent by the appellant-complainant in his presence.

Still further, learned Judicial Magistrate, on appreciation of evidence, has formed an opinion that the appellant has failed to prove its case beyond shadow of reasonable doubt. The scope of jurisdiction of the Appellate Court while hearing appeal against acquittal is limited. If the Court while examining the evidence has drawn a probable conclusion which is not suffering from any substantive error or perversity, the Appellate Court while hearing appeal against acquittal is not expected to interfere.

In the present case, this Court finds that the judgment passed by the learned Court of Judicial Magistrate, Ist Class, does not require any interference.

Dismissed.

12.12.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No