

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

CRM-A-1548-MA-2015 (O&M)

Date of decision: 12.02.2020

Punjab Small Industries and Export Corporation Ltd.

....Applicant

Versus

Gurinder Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Suvir Kumar, Advocate
for the applicant.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J.

This application has been filed seeking leave to file appeal against the judgment of acquittal dated 24.12.2014 passed by the lower appellate Court, vide which, while acquitting the respondents-accused, the judgment of conviction and order of sentence of even date i.e. 20.03.2013 passed by the trial Court, were set aside.

Brief facts of the case are that the applicant-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') against the respondents-accused with the allegations that a cheque dated 30.03.2001 amounting to Rs.11.00 lacs, on presentation

before the bank, was dishonoured. It is further stated in the complaint that the complainant has supplied HR Coils to accused No.1-Company through various invoices Ex.C1 to Ex.C13 and in partial discharge of the liability, accused No.2 issued a cheque in question Ex.C3 under his signatures on behalf of accused No.1-Company.

The trial Court, vide its judgment of conviction dated 20.03.2013, held the respondents guilty of offence punishable under Section 138 of N.I. Act and vide order of sentence of even date i.e. 20.03.2013, sentenced accused No.2 to undergo R.I. for a period of two years and to pay a compensation to the tune of Rs.22.00 lacs to the complainant. Thereafter, the respondents filed an appeal before the lower appellate Court and while reversing the judgment of conviction passed by the trial Court, the lower appellate Court allowed the appeal. The operative part of the judgment passed by the lower appellate Court reads as under: -

“First of all argument has been advanced from both the sides and findings have also been returned by learned trial Court on the ground of non joinder of Managing Director of company. The trial Court has given the finding that Managing Director was not arrayed and summoned as an accused in his individual capacity but only to represent the accused No.1 and same has been represented by accused No.2 Gurinder Singh. The trial Court has further given finding on this point that “accused No.2 has neither disputed the fact that cheque in question was issued under his signatures nor has disputed the fact that he was no more a director of the company, thus, to my mind he has also been representing the accused No.1 company. After considering this finding, this Court is of view that it is also supposition and

*such finding by trial Court is not based on any material on record. Nowhere it is established from the evidence as led by complainant that appellant is in any way acting as Managing Director of the company-respondent No.1 before trial Court. In this regard the authority is relied upon by learned counsel for appellant cited as **2012 (2) RCR (Criminal) 854 titled Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd.** wherein it is held by Hon'ble Supreme Court of India that prosecution of director of company without arraying the company as accused and in such situation the proceedings have been quashed by holding that Directors could not be executed without company being arrayed as an accused. In the case in hand although company-respondent No.1 has been impleaded as accused but during the proceedings of this case company has never been summoned through MD nor service has been effected through MD. The Court itself has conceded one Gurvinder Singh, Director to represent the company. Once the accused No.1 has never been served nor any notice of accusation has been given by the Court to the said company nor such notice of accusation has been given to appellant to represent the company then it is strange enough that how trial Court has returned the findings itself by holding that accused No.2 hereby appellant represent company accused No.1. These findings are against the spirit of settled principles of law by the Hon'ble Supreme Court of India *ibid* authority. So, such findings are not sustainable. The director of company is only vicariously liable when company is held criminally liable.*

On the next point of cheque returning memo Exhibit C5, it has been vigorously argued by counsel for appellant that photo copy cannot be admitted in evidence by Court being not even secondary evidence and mere exhibition does not dispense with

its proof. Exhibit C5 is photo copy. The trial Court has returned the findings that at the time of its exhibition accused has not objected and if such objection would have been there the complainant would have got the opportunity to remove the same by producing the original or by examining the bank official. This is not duty of accused to point out what document has to be proved by complainant. It is rather duty of Court to see if such evidence as produced on record and photo copy of document is exhibited without producing original of the same, that whether it is admissible or not. In the evidence CW.1 Ashok Kumar who has produced all these documents including photo copy of memo Exhibit C5. Perusal of trial Court file shows that there are two memos of the bank regarding dishonouring of cheque one is dated 7.4.2001 and it is produced in original, Exhibit C5 is photo copy and there are many cuttings on it. Witness of complainant has admitted in cross-examination that original of Exhibit C5 is not on record in both the complaints. He has also admitted that as per Exhibit C5 the reason of dishonouring is that "signatures are incomplete as second signatory was required to sign". This document is very crucial document. The serious doubt has been there put by accused side that this cheque was not dishonoured due to "funds insufficient" but it was due to reason that "drawer's signatures incomplete as second signatures was required". So, ignoring this fact by learned trial Court is not logical and learned trial Court has simply rejected this contention by returning the finding that it hardly matters as both the reasons are within the powers of accused. In considered view of this Court, the learned trial Court has given wrong interpretation of law and such finding has been returned by the Court without any material on record in this context. In the criminal jurisprudence it is always that the

*prosecution or complainant side which has to prove the case beyond reasonable doubt. No such evidence has been brought on record by complainant regarding the fact that any such memo in original is existing on the record nor any permission has been taken to prove it by way of secondary evidence. Photo copy of this memo is not secondary evidence. Moreover, when serious doubt is there on the basis of cuttings on it that whether dishonour was due to insufficient funds or due to incomplete signatures. In this regard law has been relied upon by learned counsel for appellant in case **Smt. J. Yashoda vs. Smt. K. Shobha Rani 2007(2) RCR (Civil) 840 Supreme Court** wherein Hon'ble Supreme Court has settled the law that photo copies of original cannot be received as secondary evidence in terms of Section 63 of Evidence Act. It is also settled that so long as higher or superior evidence is in possession of a party that party shall not give any inferior proof in relation to it. The law settled by Hon'ble Supreme Court is fully applicable to present case. Further law has been cited by learned counsel for appellant titled **Vinod Tanna vs. Zaheer Siddiqui 2002(1) RCR (Criminal) 622 Supreme Court** wherein Hon'ble Supreme Court has laid down the law that if cheque is dishonoured as signatures on the cheque were incomplete then no offence is made out under Section 138. So, in considered view of this Court, the trial Court has not properly interpreted this law although cited the same. So, such findings are not sustainable and is reversed.*

The next point of contention is regarding mistake in the name of accused No.2. The cheque in question is proved on record as Exhibit C3 allegedly signed by Gurinder Singh appellant. No such record has been produced on record by complainant that any Gurvinder Singh is Director. Legal notice

Exhibit C6 is proved on record which is sent to Gurvinder Singh through registered AD post as well as UPC. No evidence has been brought on record by complainant that Gurvinder Singh and Gurinder Singh are one and the same persons. While returning findings the learned trial Court has pre-judged this point as at the very start of returning findings Court has returned the finding that this objection is also not sustainable as Courts are for the purpose of doing effective justice considering the merits of case and not to cause its miscarriage by going into technicalities. There is no such pleadings nor evidence but Court has given findings on its own to the respect that it is only human error and it is mere clerical/typographical mistake in writing name as Gurvinder Singh instead of Gurinder Singh. Again there is no pleading by the complainant nor evidence that such mistake was not done intentionally. The Court again at its own has returned the findings that there was no such intentional act in committing such mistake. Rather Court has given the findings that it was accused who has to give evidence to make it clear. Again these findings are against criminal jurisprudence as it is not accused who has to make clear case of the prosecution and negative evidence has not to be led by accused. The Court at its own has gone through report of service constable on the warrants issued for 22.11.2002 where he has reported that wife of Gurvinder Singh was present and she intimated that her husband has gone to Ludhiana. The Court has taken judicial notice of such report of Constable which is absolutely not per se admissible nor such report has been authenticated by independent witness. Even such evidence has not been led by complainant. The Court has returned such findings on the basis of such report by Constable which is not permissible under the law. The learned trial Court has further returned the findings on

*the point that when accused admits his signatures on the cheque and he has failed to convince the Court that he has been prejudiced due to wrong mentioning of his name and objection has been turned down by the trial Court. In considered view of this Court, again it is mere supposition by the trial Court and this authority by Hon'ble High Court of Punjab and Haryana cited as **V.K. Gupta vs. Manjit Kaur 2008(3) RCR (Criminal) 430 P&H** is wrongly made applicable to the facts of this case. This judgment is also relied upon by counsel for appellant. In this authority the Hon'ble High Court has given the finding that trial Court has no power to allow correction in the complaint. As per the facts of this case before Hon'ble High Court, complainant erroneously mentioned the date of presentation of cheque and date of dishonour of the same and the Hon'ble High Court has given the finding that in such situation complainant has to suffer for defects and Magistrate has no power to return the complaint for removing the defects. So, in considered view of this Court, the learned trial Court has wrongly interpreted the law settled by Hon'ble High Court. As such, finding on this point by learned trial Court is also not sustainable.*

Another point has been argued regarding service of legal notice and admissibility of postal receipts. The trial Court has returned the finding that accused has not disputed the fact that complete address reflected in the legal notice was not correct or same was incomplete. The trial Court has given findings that on postal receipt only house number of accused has not been mentioned, it cannot be said that same is fatal to case of complainant. There is no case of complainant that postal department mentions address in this way but Court has drawn such inference on the basis of postal receipt. The learned trial Court has further given the finding that even in case registered

*cover has been sent to incomplete address, the accused would have been served through the notice sent by ordinary post. It is again strange to this Court that as per law under Section 138 of Negotiable Instruments Act a legal notice has to be served mandatorily through registered AD post. The trial Court has given contradictory findings as on the one hand it has stated that due to incomplete address registered cover has not been served and it is not presumed under law that ordinary post is surely delivered to the addressee. The learned trial Court has gone to this extent of returning the finding that even in case the Court comes to the conclusion that no notice has been received by accused, in that case also no benefit can be given to him in view of settled law by Hon'ble Supreme Court in case titled as **C.C. Alavi Haji vs. Palapetty Muhammad** unreported judgment by the Hon'ble Supreme Court. It is again wrong application of the law as it is legal and valuable right of accused as enshrined in legislation to receive legal notice upon dishonouring of cheque and giving chance to the accused to make payment. In the given facts and circumstances of the case it is very much needed that complainant has to prove on record that accused has been well served regarding dishonouring of cheque and liability was pointed out in the cheque. The learned trial Court in this regard has further returned the finding to the respect that "the purpose of service of legal notice is to intimate the bonafide drawer that his cheque has been dishonoured and he can avoid prosecution by making payment but in case drawer wants to dispute his liability, then hardly makes any difference that whether he had received the legal notice or not". Again there is no such pleading by complainant nor any evidence and this Court has drawn the conclusion that it is against the basic provisions of law and also settled law. In considered view of this*

Court, such findings are also not sustainable.

Next point of contention as raised by counsel for appellant is that Senior Officer R.K. Goyal is not competent to file the complaint nor unauthorized person can depose as a witness when complainant company is a registered company under the Companies Act. The law has been settled that company do the work as per resolutions and any person acting on behalf of company shall be duly authorized. No such resolution has been proved on record that complaint has been filed by authorized person or Ashok Kumar who appeared as CW.1 on behalf of company is also authorized to depose. In the evidence when CW.1 Ashok Kumar has been confronted with this situation he could not explain regarding any authority to him to depose or regarding any authority to earlier Law Officer R.K. Goyal to file complaint. He has admitted in cross-examination that Board of Directors of complainant corporation has not given him any authority by way of resolution to depose in this case rather he has further stated that the person who has given him authority has been authorized by the Board of Directors. He has further admitted that there is no mention of resolution passed by Board of Directors in favour of Sanjeev Bawa to authorize him to depose in this case. He has also admitted that he cannot not show any resolution passed by Board of Directors in favour of M.D. or Sanjeev Bawa to authorize Ashok Kumar Prashar to depose in this case. He has admitted that this complaint has been filed through R.K. Goyal and after his retirement Mohinder Pal was substituted. He has admitted that he himself is retired employee. It is not explained by complainant that why R.K. Goyal who was also retired has not been produced. After this cross-examination and just to fill up lacuna Mohinder Pal, Section Officer (Legal) has been examined as CW.2 but he could

not tell anything about the case. He has rather demolished the case when stated that after retirement of R.K. Goyal on 30.9.2009, no resolution is on record upto 10.1.2013 to represent this case. So, the learned trial Court has returned the findings which has no legal base nor any evidence is on record. The complaint has not been filed by authorized person nor witness CW.1 is duly authorized to depose on behalf of complainant company.

Next plea as raised by learned counsel for appellant is that this cheque was given as security cheque and purpose was not to repay any legal debt. In this regard the evidence of complainant is very much relevant. In cross-examination CW.1 Ashok Kumar could not produce any of the record vide which accused No.1 Navrattan Steel Company purchased any steel from complainant company. He is confronted regarding producing the purchase orders and he has stated that same are not traceable in record. He could not tell how many purchase orders were there by accused company. He has also admitted that amount of payment is to be determined from the purchase orders. He has admitted that no purchase order was taken from Navrattan Steel. He has admitted that complainant company supply the material on demand of concerned person and request can be oral or may be in writing. He could not show any document pertaining to demand raised by accused No.1 company. Even he could not show that this material was received under signatures of competent person of Navrattan Steels. He has produced copy of invoice but again admitted that on carbon copy of this invoice which he has provided in the Court on that day there is overwriting and tampering. So, it is also not explained if there was any legal debt against which this cheque in question was issued. He himself has rather admitted

that whosoever comes for purchase of steel, that party is to furnish security against that booking. The security is in the shape of cheque/bank draft for some percentage of total material. So, the witness of complainant itself demolished the case of complainant before the learned trial Court. As the complainant has failed to produce on record any cogent evidence that there was no supply of steel and there was any amount due for such supply against which this cheque in question was issued. The learned trial Court has made presumptions which is against the law. The present appellant is not responsible and he had no legal liability which he has to fulfill and against which he has given any such cheque. It is not accused who has to get produce documents from complainant company against his own interests. It is rather complainant company who has to explain and produce all the documents fixing legal liability of accused-appellant. So, in considered view of this Court, learned trial Court has given findings which are against the law and such findings as returned in the judgment under appeal are not sustainable. I reverse the same. There is no criminal legal liability of accused-appellant and he has been wrongly held guilty. I hereby set aside the judgment of conviction and order of sentence. This appeal is hereby allowed and consequently, appellant is hereby acquitted. Appellant is directed to furnish bonds in the sum of 10,000/- with one ₹ surety in the like amount, in terms of Section 437-A of Cr.P.C. Record of learned trial Court be sent back along with copy of judgment. Appeal file be consigned to the record room.”

Present application seeking leave to appeal is filed against the impugned judgment of acquittal and the same is pending since 2015.

The lower Courts record was requisitioned and during the course

of arguments, with the assistance of learned counsel for the parties, the same was perused.

Learned counsel for the applicant has argued that the lower appellate Court has, in fact, reversed the findings recorded by the trial Court without assigning good reasons. It is further argued that accused No.2, being Director of accused No.1-Company, is vicariously liable, when accused No.1-Company is held liable for the offence. It is also argued that the lower appellate Court has wrongly held that the memo Ex.C5, vide which the cheque was returned, is not admissible, as no permission to lead secondary evidence was obtained and even record of the complainant Ex.C4 to Ex.C17, being photocopies, is not admissible. It is next argued that the lower appellate Court has wrongly observed that address given in the legal notice was not correct and was incomplete, whereas there is a presumption attached to the notice issued through registered A.D. Post.

Learned counsel for the applicant has further argued that the lower appellate Court has observed that the complaint was not filed by the authorized person, whereas CW1 Ashok Kumar was duly authorized by the applicant-Corporation to appear on its behalf and therefore, findings recorded by the lower appellate are incorrect. The lower appellate Court has further wrongly held that the cheque, in fact, was given as security and was not meant to discharge any liability.

In reply, learned senior counsel for the respondents has argued that the complaint itself is not maintainable, as accused No.1-Company was impleaded through the Managing Director and nobody was named as

Managing Director and therefore, no person on behalf of accused No.1-Company could be convicted, as nobody is named as Managing Director. It is further argued that there is no evidence on record to show that accused No.2-Director was responsible for day to day business of accused No.1-Company. In support of his arguments, learned senior counsel has relied upon a judgment in **Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd., 2012 (2) RCR (Criminal) 854** to submit that it has been held by the Hon'ble Supreme Court that where the complainant failed to prove that accused, who has been arrayed as Director of the Company, is not responsible for day to day functioning of the Company and he cannot be held guilty.

Learned senior counsel for the respondents has further argued that the documents Ex.C4 to Ex.C17 are photocopies and therefore, they are not admissible in evidence, as originals thereof were not produced on record. It is further argued that even the notice Ex.C6 itself is defective, as it is not mentioned that accused No.1-Company is served through an individual as it is only mentioned 'through its Managing Director'. It is also submitted that even the address given in the notice is incomplete and there is no presumption that the notice was ever served. In this regard, learned senior counsel has relied upon **M/s Kumar Exports Vs. M/s Sharma Carpets, 2009 (1) RCR (Criminal) 478**, wherein the Hon'ble Supreme Court has held that where the complainant has not produced the books of account or stock register maintained by him in the course of his regular business, complaint is liable to fail and the accused was acquitted. Learned senior counsel has further relied upon **M.S. Narayana Menon @ Mani Vs. State of Kerala and another,**

2006 (3) RCR (Criminal) 504, wherein similar view has been taken by the Hon'ble Supreme Court.

It is next argued that even in the return memo Ex.C5, it is stated that the drawer's signatures are incomplete and returned for signatures, as per endorsement No.11 dated 10.07.2001. Learned senior counsel has relied upon **Vinod Tanna Vs. Zaheer Siddiqui, 2002 (1) RCR (Criminal) 622**, wherein the Hon'ble Supreme Court has held that if a cheque is dishonoured, as signatures on the cheque were incomplete, no offence is made out.

Learned senior counsel for the respondents has next argued that the complainant has failed to prove on record the authorization in his favour by the Board of Directors of the applicant-Corporation and no such documents has been exhibited on record to show that CW1 Ashok Kumar, who appeared on behalf of the complainant, was authorized person.

Learned senior counsel for the respondents has also argued that in the cross-examination of CW1 Ashok Kumar, it has come that there is no resolution in favour of Sanjeev Bawa, who filed the complaint and he could not produce on record any resolution passed by the Board of Directors in favour of Sanjeev Bawa to authorize Ashok Kumar to depose in the case.

Learned senior counsel has lastly relied upon a judgment of the Hon'ble Supreme Court in **A.C. Narayanan Vs. State of Maharashtra and another, 2015 (1) Crimes 116** to submit that where a complaint is filed by Power of Attorney of a Company, but the evidence is given by an employee of the Company, without being empowered to file the complaint, the order of acquittal passed by the Court below, is liable to be upheld.

It is further submitted that without following the procedure as per Section 65 of Evidence Act, the photocopies of the documents, without production of originals thereof, mere exhibition of the documents, will not dispense with the mode of proof. Learned senior counsel has relied upon a judgment in **Smt. Suvinder Kaur @ Shavinder Kaur Vs. State of Haryana, 2003 (2) RCR (Criminal) 815**, wherein similar observations have been made by this Court.

After hearing learned counsel for the parties, I find no merit in the present application, for the following reasons: -

- (a) A perusal of the record shows that the documents Ex.C4 to Ex.C17 are photocopies of the record of the complainant-Corporation and originals thereof were never produced on record, therefore, in view of judgment of the Hon'ble Supreme Court in **M/s Kumar Exports's** case (supra), the complainant has failed to prove its case.
- (b) Accused No.1-Company is sued as M/s Navrattan Steel Tubes Pvt. Ltd. through its Managing Director and nobody is named as Managing Director and therefore, prosecution of the accused No.1-Company without naming any person as Managing Director, is defective, as even in case of holding the Company guilty, no one can be sentenced. Even the complaint has not been filed assigning the role of accused No.2 specifically and therefore, the same is not maintainable in view of **Aneeta Hada's** case (supra).

- (c) A perusal of the complaint shows that R.K. Goyal was working as Senior Law Officer in the complainant/Corporation and was authorized by the competent authority, whereas he was never examined as a witness; rather CW1 Ashok Kumar, in cross-examination, admitted that there is no resolution in his favour either by the Board of Directors of the complainant-Corporation or by the Managing Director and therefore, the complainant is not proved to be instituted through authorized person in view of **A.C. Narayanan's** case (supra).
- (d) Perusal of the complaint further shows that nothing is mentioned about the status of accused No.2 except in para No.10, wherein it is stated that accused No.1 is a Company and accused No.2 is its Director, who has signed the cheque in question, therefore, findings recorded by the lower appellate Court does not warrant any interference.
- (e) A perusal of the document Ex.C5 further shows that it was returned with the remarks 'drawer's signatures incomplete', though there is another endorsement Ex.C4, which shows the remarks 'funds insufficient', however, both these documents relate to the same cheque No.282811 dated 31.03.2001 and it appears that same was presented twice by the complainant, from where such endorsements have come. Therefore, in view of **Vinod Tanna's** case (supra), the accused were rightly acquitted.
- In view of the above and on re-appreciation of the evidence

available on record, I find no ground to differ with the findings recorded by the lower appellate Court, acquitting the respondents-accused.

Accordingly, the present application seeking leave to file appeal against the judgment of acquittal dated 24.12.2014 passed by the Additional Sessions Judge, Chandigarh, is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

12.02.2020
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No