

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

**CRA-S-751-SBA-2005(O&M)
Date of decision:-4.3.2020**

R.B.S. Chahal

...Appellant

Versus

Anil Kumar Gulati

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.G.S. Dhaliwal, Advocate
for the appellant.

Mr.Mukul Goyal, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that complainant Sh.R.B.S. Chahal, Advocate, a resident of Chandigarh through attorney Sh.Sanjeev Attri had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against accused Anil Kumar Gulati, a resident of Sector-22, Chandigarh on the allegations that complainant is a practicing lawyer at Punjab & Haryana High Court, Chandigarh; he had got an assignment in England in legal profession, therefore he was desirous of selling his library including books, law journals, text books etc; accused Anil Kumar Gulati contacted him in that connection and purchased all the law books from the complainant; he had issued two cheques i.e. cheque No.660724

in the sum of Rs.35,000/- dated 10.8.1999 and cheque No.660730 dated 30.11.1999 in the sum of Rs.30,000/-; both the cheques were drawn at Ropar Central Co-operative Bank Ltd., Ropar; the accused had requested the complainant not to present the cheques since according to him he would make the payment in cash; the complainant was taken in by such talks of accused, as such the period of limitation of one cheque of Rs.35,000/- got expired; when the accused failed to make the payment, then the complainant deposited cheque No.660730 for Rs.30,000/- with his banker i.e. Allahabad Bank, Chandigarh, however this cheque was not honoured by the banker of the accused and it was received back dishonoured due to insufficient funds; thereafter the complainant had issued legal notice dated 27.3.2000 to the accused calling upon them to make the payment of the cheque within 15 days of receipt of notice; the notice was sent through registered post but the same was received back, as such the complaint in question was filed.

After recording of preliminary evidence, the accused was summoned. He put in appearance. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

During the course of evidence of the complainant Sh.Salinder Kumar appeared as CW1, whereas complainant had got his own statement recorded as CW2 and he proved on record special power of attorney Ex.C1, cheque Ex.C2, bank memos Ex.C2 and Ex.C3, copy of the legal notice Ex.C4, postal receipts Ex.C5 to Ex.C7, statement of account Ex.CW1/A and photocopy of the cheque returning register Ex.CW1/B.

With that the evidence of the complainant stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them pleaded that a false complaint has been filed against him.

During his defence evidence, the accused produced certain documents i.e. Ex.D1 receipt, Ex.D2 reply of the notice, Ex.D3 also the receipt (wrongly marked as D2).

After hearing arguments, the learned trial Magistrate dismissed the complaint under Section 138 of the Act and acquitted the accused of the notice of accusation vide judgment dated 11.10.2004. The relevant part of the judgment is being reproduced as under:

13. Complainant has been examined in the present case as CW2. While appearing in the witness box he has not specifically denied having issued of four cheques. He deposed that he did not remember receiving of four cheques from the accused. He further deposed that he did not remember any other cheques except two cheques. He gave a new story in his cross-examination that previously accused gave few cheques but taken them back and ultimately gave two consolidated cheques of Rs.35,000/- and Rs.30,000/-. But this version has not been mentioned by him in his complaint. He has also not further specifically denied whether any amount of Rs.20,000/- was deposited in his account or not.

14. Be that as it may be. While appearing in the witness

box he has admitted the signature on Ex.D1 appears to be of his wife meaning thereby the complainant has not denied that the same was not the signature of his wife. The signature on a document can be identified by a person who is conversant with the handwriting of the scribe or signatory. Furthermore, he has not stated that it is a forged receipt and signature is forged. Section 67 of the Indian Evidence Act clearly prescribed that the document can be admitted by a person who is conversant with the handwriting of the person signed on the document. Accordingly, this document can be read into evidence. Furthermore, complainant has admitted in his cross-examination that Ex.D2 words Rajvarinder Singh Chahal in capital letters are in his own hand. He further stated that though he does not remember the contents but he wrote his name in the capital letters. Once it has been admitted by the complainant that this document has been signed by him, the same can certainly be read into evidence. The complainant cannot wriggle out from his own statement.

15. Though there is no proof whether the amount of Rs.55,000/- was paid by the accused to the complainant in discharge of the agreement but in the present case the Court has to see whether the cheque in question was issued for the discharge of his outstanding liability or whether the cheque was issued towards the security. From the evidence discussed above as well as from the careful perusal of

Ex.D1 and Ex.D3 it becomes very clear that the said cheque was not issued towards the discharge of any outstanding liability.

16. *The wordings of Ex.D3 are:-*

“Received cheque for Rs.20,000/- and 35,000/- dt. 10.8.99 from Mr.Anil Kumar on account of selling of Law Books worth Rs.fifty five thousand. He will give the payment by cash and take the cheques back. Books will be supplied on the receipt of payment.

I also take two extra cheques for amount Rs.7,500 and 30,000/- dt. 30.11.99 only for security purpose. I will returned all the cheques on the receipt of payment. I will not misuse it. List of Books (Law Books) worth Rs.Fifty five thousand is attached.”

Had it been so, the accused cannot be held guilty for the offence punishable under Section 138 of the Negotiable Instruments Act.

The complainant felt aggrieved by the impugned judgment and he had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal. Leave to appeal was granted to him vide order dated 8.4.2005.

Notice was given to the respondent/accused, who put in appearance through counsel.

I have heard learned counsel for the parties besides going

through the records.

The judgment passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which may called for setting aside of that judgment. By giving valid reasoning, the trial Court has concluded that the complainant has failed to establish the essential ingredients of Section 138 of the Act. Therefore, no offence by the accused is shown to be committed and he was rightly acquitted by the Magistrate. No reason is there to interfere with such judgment of acquittal.

Finding no merit in the appeal, the same stands dismissed.

4.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No