

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-655 of 2019 (O&M)

DECIDED ON:23rd March, 2022

Rajeev Mittal

.....APPELLANT

VERSUS

M/s Himanshu Handloom

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. R.K. Chaudhary, Advocate for petitioner.

AVNEESH JHINGAN, J (ORAL)

Due to COVID-19 situation, the Court is convened through video conference.

This application under Section 378(3) Cr.P.C. is filed for grant of leave to appeal against judgment of acquittal in complaint case under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act').

The brief facts are that complainant-Rajeev Mittal (appellant) on 16.7.2012 entered into a tenancy agreement with Himanshu Chug (for short 'respondent'), the monthly rent was Rs.17,051/-. Payment of six months rent was to be made in advance. On the request of the respondent, by mutual consent on 21.9.2013 the tenancy was terminated. The premises were vacated on 30.9.2013.

According to the appellant, the respondent instructed appellant for presenting cheque No.020018 dated 1.1.2014 for Rs.1,02,306/- for adjusting the amount for damages, as respondent after taking possession had caused damage to the premises. On presentation the cheque was dis-honoured and after serving notice, the complaint was filed.

The defence taken by the respondent was that four cheques in lieu of advance payment of rent w.e.f. 1.7.2012 to 31.12.2013 were given to complainant. As the premises were vacated in September, 2013, there was no liability to pay rent thereafter. The respondent examined Bank official to prove that the application was moved for stopping the payment of the cheque, in view of change in circumstance. Ahlamd of Civil Court deposed and produced certified copy of the plaint of Civil Suit No.70 of 2016, filed by the respondent for recovery of Rs.51,153/- paid as advance rent for the period from October, 2013 to December, 2013. Copy of the judgment and decree of civil Court dated 18.8.2018 was placed on record. The suit was decreed and the appellant was directed to refund the amount of Rs.51,153/- alongwith interest.

The trial Court after considering the facts and appreciating the evidence adduced concluded that the respondent was successful in rebutting the presumption under Section 139 of the Act.

The stand taken by the appellant that the cheque was presented for damages caused to the premises by the respondent was not substantiated by producing evidence and was found contrary to the findings recorded by the Civil Court that no damage was caused to the property of the appellant.

Learned counsel for the appellant submits that the judgment acquitting the respondent is erroneous.

It is settled law that in appeal against acquittal interference is made if there is on the basis of perversity or misreading of evidence or for compelling reasons.

Perused the pleadings and heard learned counsel for appellant.

There is no dispute on following facts:-

- (i) The Civil Court decree was passed against appellant

and findings were recorded that no damage was caused to the building.

- (ii) That the appellant was in possession of the cheques given for advance payment of rent.
- (iii) The premises in question were vacated on 30.9.2013 and the appellant had got the advance rent for the period from 1.7.2012 to 31.12.2013 and had to refund advance rent of Rs. 51,153/- alongwith interest, in pursuance to decree passed by civil Court.

The respondent had successfully rebutted the presumption under Section 139 of the Act thereby establishing misuse of cheque possessed by appellant.

The learned counsel failed to show any error of law or on fact in the judgment under challenge.

No case is made out for granting leave to appeal.

Dismissed.

As leave to appeal is being denied, the pending application including for condonation of delay are disposed of accordingly.

23rd March, 2022

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**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned *Yes*

Whether reportable *Yes*