

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

CRM-2295-2020 in/and

CRM-A-158-2020

Decided on:-December 14, 2022

Odiane A 2 Z Solutions through its Proprietor Mr. Amit Arora

.....Applicant

versus

Devraj

.....Respondent

CORAM HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present:- Mr.Pankaj Singh, Advocate, for the applicant.

SANDEEP MOUDGIL, J

CRM-2295-2020

Prayer in this application under Section 5 of Limitation Act,1963 is for condonation of delay of 9 days in filing the appeal.

Keeping in view the reasons mentioned in the application, the same is allowed and delay of 9 days in filing the appeal is condoned.

CRM stands disposed off.

CRM-A-158-2020

By filing the present appeal, under Section 378(4) Cr.P.C, the appellant has assailed the judgment dated 10.10.2019, passed by the Judicial Magistrate Ist Class, Sonipat, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under Section 138 of the Negotiable Instruments Act (for short ' the Act').

It is contended that the learned trial Court dismissed the complaint without appreciating the fact that respondent-accused had duly

admitted that the cheque bearing No.522513 dated 12.06.2015 of Rs.4,00,000/- drawn on HDFC Bank, Branch at SCO 778-779, Opposite Mahabir Dal Hospital, Kunjpura Road, Karnal, Haryana, for liability to pay payments of electrical equipment collected by him, which was dis-honoured with the remarks 'funds insufficient'. Thereafter, the applicant had served a registered notice upon the respondent-accused on 13.07.2015, however, the respondent did not make the payment intentionally and deliberately but the trial Court erred in not taking into consideration this very fact. The impugned judgment is liable to be set aside.

Heard.

The learned Judicial Magistrate has recorded that there is an anomaly in the complaint itself as the complainant in complaint has merely mentioned that the accused did not make payment of some amount which he had collected from the clients. The Partnership Deed Ex.D1 produced on record does not show the relationship of master-servant rather it discloses relationship of partners between them. The onus to prove the liability of the respondent-accused was upon the complainant but he has miserably failed to prove the same and in cross examination, he himself stated that he could not even tell the name of any person, from which the accused took payment on behalf of the complainant. Moreover, no client has stepped into the witness box to depose before the court to prove that the accused infact took payments from them but did not return the same to the complainant.

Moreover, it is apparent from the record that the complainant in his cross examination has mentioned that the respondent had given two cheques one of Rs.6,00,000/- and another of Rs.4,00,000/- and an affidavit signed by the respondent on the same day was also placed on record by the

complainant as well as the respondent containing the amount of Rs.6,00,000/- only, which was relied upon by the complainant in another cheque bounce case between the parties related to the other cheque of Rs.6,00,000/-. The complainant did not move a single complaint regarding both cheques, also creates a doubt against the version of complainant.

It is a settled law as held in **C.Antony v. K.G.Raghavan Nair, 2002(4) RCR(Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

On perusal of the judgment passed by the trial Court dated 10.10.2019, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

Accordingly, the leave to appeal stands declined.

Dismissed.

December 14, 2022

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(SANDEEP MOUDGIL)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No