

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

CRA-S-3139-SB-2010 (O&M)

Date of Decision: 19.04.2023

M/s Suraj Trading Co. and another ...Appellants

Versus

Suresh Kumar ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Aashna Aggarwal, Advocate
for the appellants.

Mr. Parminder Singh, Advocate
for the respondent.

N.S.SHEKHAWAT, J.

1. The present appeal is directed against the judgment dated 19.10.2007 passed by the Court of learned Additional Sessions Panipat, whereby, the respondent was ordered to be acquitted of the notice of accusation.

2. As per the case of the prosecution, appellant No. 2/complainant M/s Suraj Trading Company and appellant No.1/complainant were doing the business of sale of whole sale supply of Ghee, Maida, Sugar and other Kiryana articles. The respondent/accused had been making purchases of Ghee, Maida etc., from the appellants and was getting the bills thereof in the name of his Firm M/s Faristha Foods. The respondent purchased Ghee, Maida etc., from the appellants during the period from November 2001 to 4th September 2002 worth Rs. 73,180/-. A sum of Rs. 6750/- was outstanding for the previous purchases. Consequently, the respondent was liable to pay a sum of Rs. 79,930/- to the appellant on account of purchase of various Kiryana articles and necessary bills were issued to him. Finally, the

Respondent/accused admittedly issued a cheque No. 212876 dated

30.09.2002 for a sum of Rs. 75,000/- in the name of appellant No. 1.

The cheque was presented by the appellant in their account No. 3134 in Punjab National Bank, New Sabji Mandi, Panipat. However, the same was returned to them by their bank vide memo dated 18.10.2002 for the want of funds in the account of the respondent. The appellants issued a statutory notice dated 22.10.2002 to the respondent in the registered AD/UPC cover through their counsel, calling upon him to make the payment within a period of 15 days from the date of receipt of the notice, failing which, criminal proceedings would be initiated against him. The respondent refused to receive the notice and ultimately the appellants were constrained to file a complaint against the respondent under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**').

3. Vide order and judgment dated 03.10.2006 passed by the learned Magistrate 1st Class, Panipat, the respondent was ordered to be convicted for the offence under Section 138 of the Act and was sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 60,000/-. However, on appeal being preferred by the respondent, he was ordered to be acquitted by the appellate Court. Challenging the said acquittal, the appellants/complaint have preferred the present appeal before this Court.

4. Learned counsel for the appellants vehemently argued that the cheque in question was issued for clearing the outstanding liability for a sum of Rs. 79,930/- for a period from November 2001 to 04.09.2002, which was due from the respondent and for making the

payment of the above said amount, the cheque in question for a sum

of Rs. 75,000/- was issued in favour of the appellants. Even the signatures on the cheque stood admitted by the respondent and he was admittedly having business transactions with the appellants. Still further, the case of the respondent was self-contradictory. On one hand, he stated that he had handed over a blank signed cheque as security to the appellants, whereas, on the other hand, he stated that the cheque was issued for the payment of Rs.5000/- and Rs.75,000/-. Still further, the learned trial Court wrongly held that there was material alterations in the cheque as figure “7” in the cheque had been inserted later on, which was written in a different ink as per the report of the handwriting expert. However, it was apparent that the words in the body of the cheque had been written without any break and were in same ink. Further, Rs. 75,000/- had been written in one strike without leaving any gap. Even the signatures on the cheque were not disputed and the findings with regard to the material alterations in the cheque by the appellate Court were without any basis. The learned counsel further submitted that once the signatures of the cheque are admitted, it does not make any difference if the body of the cheque is in the hand writing of the accused and even the report of the hand writing expert was not admissible in evidence. Apart from that, the learned appellate Court had clearly overlooked the evidence led by the appellants and the impugned judgement is legally unsustainable.

5. On the other hand, learned counsel for the respondent vehemently argued that the learned trial Court had recorded valid and detailed reasons, while acquitting the respondent. There was material

alteration in the cheque and as per Section 87 of the Act, the material

alteration in the cheque had rendered the same as void and such alteration was made without his consent. Apart from that, there was no evidence to show that some land dispute was outstanding against the respondent and the findings recorded by the learned appellate Court are liable to be upheld by this Court.

6. I have heard learned counsel for the parties at length and considered the rival submissions made by both the sides. Apart from that, I have also carefully perused the trial Court record with the assistance rendered by learned counsel for the parties. After due consideration of the evidence on record, I am of the considered opinion that there is no force in the submissions made by the learned counsel for the appellants. From a perusal of the cheque Ex.A2, it is apparent that the entries have been made in the cheque on three different occasions, with different pens. The signatures of the respondent are in a different ink, whereas the other writing on the cheque is in entirely different ink. Apart from that, the amount of Rs. 75000/- in the cheque had been written with two different inks, which is apparent from the naked eye as well as from the report of the hand writing expert Ex.DW1/A. It is apparent from the bare perusal of the cheque that the digit "7" had been written with royal blue ball point pen, whereas the remaining digits "5000" had been written with bluish black ball gel pen. Apart from that, it is apparent that the formation of digit "7" is also different from the formation of other digits "5000" in the cheque. It is apparent that the digit "7" had been added by someone with the original figures of "5000", to enhance the amount to Rs. 75000/-. Apart from that, it is apparent from the report

the cheque was not in the hand of the respondent. Thus, it is apparent that there was material alteration in the cheque, which renders the cheque void.

8. Apart from that, Section 87 of the Act also speaks about the effect of material alteration and the same has been reproduced below:-

“87. Effect of material alteration .—Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; Alteration by indorsee.

—And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of sections 20, 49, 86 and 125”.

9. It clearly suggests that any material alteration of an negotiable instrument renders the same void as against anyone who is party thereto at the time of making such alternation and does not consent thereto unless it was made in order to carry out the common intention of the original parties.

10 In the present case, from the perusal of the evidence led by the appellants, it is apparent that the alterations in the amount of cheque Ex.A2 was not made in order to carry out the common

intention of the original parties. Therefore, by virtue of the material alterations being made to the amount of cheque without any

authentication thereto by the drawer of the cheque, the instrument had become void. However, the banker even there being a material alteration in the cheque, did not proceed to mention the same as one of the many reasons for rejecting the cheque and only returned the cheque dishonoured for the reasons of want of funds in the account of the respondent/accused. Still further, even the appellants did not say any word that the correction in the amount was effected with the knowledge or consent of the drawer. Thus, the findings recorded by the learned first appellate Court are liable to be upheld by this Court. The learned counsel for the appellants had placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **Bir Singh Vs. Mukesh Kumar 2019(2) R.C.R. (Criminal) 1**; **Ravi Chopra Vs. State and another 2008(13) R.C.R. (Criminal) 654** and **PSA Thamotharan Vs. Dalmia Cements (B) Ltd. 2005(1) R.C.R. (Criminal) 1002.** There is no dispute with regard to the law laid down in the said judgments, however, the said judgments are not at all applicable to the facts of the instant case. In the said cases, the amount was subsequently filled in the unfilled cheques and it was not construed as a material alteration. However, in the present case, the amount of "Rs. 5000" was altered to Rs. 75000/- by adding a digit "7" to the initial amount of "Rs.5000" and the said fact was apparently visible. Apart from that, the appellant No. 2 appeared in the witness box as PW4. He clearly stated that the cheque was filled by the respondent himself and even he had filled the amount in the cheque. On the other hand, the respondent examined DW1 Shamsheer Singh, Hand Writing Expert, who placed on record the expert opinion as

was filled by some other person and the signatures by a different person. Even from the bare perusal of the cheque, it is apparent that the writing on the cheque was of three different persons and the cheque appears to have been filled thrice by different persons using different inks. Apart from that, the appellants could not lead substantial evidence to show that the cheque was issued in discharge of any legal liability. Thus, this Court does not find any substance in the arguments raised by the learned counsel for the appellants that the cheque amount was issued for clearing the outstanding liability of Rs. 79930/-. Even, once it has been established that there were material alteration in the cheque, the claim raised by the present appellants was not at all maintainable. The complaint was liable to be dismissed only on this sole ground.

11. Even the scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all.

12. In view of the above discussion, this Court finds that the impugned judgment dated 19.10.2007 passed by the Court of learned Additional Sessions Panipat, does not suffer from any material irregularity or perversity and it is liable to be upheld by this Court and the appeal is, accordingly, dismissed being devoid of merits.

13. All pending applications, if any, are disposed off, accordingly.
14. Records of the Court below be sent back.

19.04.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No