

CRA-S-3385-SB-2012 (O&M) &
CRA-S-3386-SB-2012 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203-2

Decided on: 15.05.2023

1. CRA-S-3385-SB-2012 (O&M)

Mohanbir Singh

. . . Appellant

Versus

Hari Parkash Gimra

. . . Respondent

2. CRA-S-3386-SB-2012 (O&M)

Mohanbir Singh

. . . Appellant

Versus

Hari Parkash Gimra

. . . Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Om Pal Sharma, Advocate,
for the appellant (in both appeals).

Mr. Tarun Singla, Advocate,
for the respondent (in both appeals).

SANJAY VASHISTH, J. (Oral)

1. By this judgment, two appeals, i.e. CRA-S-3385-SB-2012 and CRA-S-3386-SB of 2012, filed by same appellant, namely, Mohanbir Singh (hereafter referred to as, 'the complainant'), are being decided together, inasmuch as, parties in both the appeals are same, and the finding of acquittal has been recorded by the learned Trial Court after dealing with & analyzing same set of evidence, vide impugned judgment(s) dated 06.04.2012.

FACTS OF CRA-S-3385-SB-2012:

2(i). In this appeal, the complainant has challenged the judgment dated 06.04.2012, passed by learned Judicial Magistrate Ist Class, Ludhiana/ Trial Court, in Criminal Case No. 368/2, dated 30.08.2008, titled as '**Mohanbir Singh v. Hari Parkash Gimra**', vide which respondent- Hari Parkash Gimra, was acquitted in a complaint case filed by the complainant, under Section 138 of the Negotiable Instruments Act, read with Section 120 IPC, alleging that one cheque bearing No. 541279, dated 01.02.2008, for an amount of Rs.1,00,000/-, drawn on Oriental Bank of Commerce, Extn. Counter, New DMC College & Hospital, Tagore Nagar, Ludhiana, was issued by the respondent in favour of Complainant. But on being presented before Canara Bank, Bharat Nagar Chowk, Ludhiana, the said cheque was bounced, and vide memo dated 26.06.2008, the complainant was informed that '**today's opening balance is insufficient**'.

2(ii). After issuance of legal notice regarding non-payment of the cheque amount, complainant instituted the aforementioned complaint before the concerned Court Trial Court, and the same was dismissed, vide impugned judgment dated 06.04.2012, thereby acquitting the respondent. The said judgment of acquittal was challenged by the complainant before this Court, alongwith an application No. CRM-A-440-MA-2012, under Section 378(4) read with Section 482 Cr.P.C., seeking leave to appeal, which was allowed by this Court vide order dated 21.11.2012.

FACTS OF CRA-S-3386-SB-2012:

3(i). In this appeal, the complainant has challenged another judgment

dated 06.04.2012, passed by learned Judicial Magistrate Ist Class, Ludhiana/Trial Court, in Criminal Case No. 358/2, dated 28.08.2008, titled as ‘Mohanbir Singh v. Hari Parkash Gimra’, vide which respondent - Hari Parkash Gimra, was also acquitted in the second complaint case filed by the complainant, under Section 138 of the Negotiable Instruments Act, read with Section 120 IPC.

3(ii). In this case, the complainant has alleged that following four cheques, drawn on Oriental Bank of Commerce, Extn. Counter, New DMC College & Hospital, Tagore Nagar, Ludhiana, were issued to him by the respondent:-

Cheque No.	Date	Amount (Rs.)
541229	28.12.2007	26,708/-
802955	28.05.2008	15,849/-
541252	28.01.2008	16,390/-
541278	21.02.2008	8,350/-

3(iii). After presentation, all the four cheques were bounced, and the same were returned by the bank to the complainant, vide Memo. dated 26.06.2008/27.06.2008, with the remarks - ‘**today’s opening balance is insufficient**’.

3(iv). After issuance of legal notice and non-payment of the cheque(s) amount, the complainant instituted the aforementioned complaint before the concerned Trial Court, which was dismissed vide impugned judgment by acquitting the respondent. The said judgment of acquittal was challenged by the complainant before this Court, alongwith an application No. CRM-A-542-MA-2012, under Section 378(4) read with Section 482 Cr.P.C., seeking

leave to appeal, which was allowed by this Court vide order dated 21.11.2012.

SUBMISSIONS:

4(i). At the inception of arguments by respective learned counsel for the parties, it was noticed that in these appeals, record of Trial Court has not been received. However, considering the aspect that cheque(s) in question relates to the year 2008, and appeals are pending adjudication before this Court for more than 10 years, on being agreed by both the counsel for the parties, complete and relevant record available with learned counsel for the appellant was produced for perusal of the Court during the course of arguments.

4(ii). Learned counsel for the parties are also *ad idem* that grounds of acquittal in both the cases are the same and finding of acquittal was recorded by the learned Trial Court after dealing with the same and similar set of evidence available before it in both the cases. Thus, the submissions being advanced by them would be applicable to both the appeals, i.e. CRA-S-3385-SB-2012 and CRA-S-3386-SB-2012.

5(i). Mr. Om Pal Sharma, learned counsel for the appellant, submits that both the appeals are identical and between the same parties, i.e. complainant- Mohanbir Singh and respondent - Hari Parkash Gimra, and the only difference is of cheque(s) number and amount involved.

5(ii). He further submits that learned Trial Court has committed illegality in acquitting the accused/respondent only on one ground, *i.e. by giving undue weightage to the alleged documents of compromise (Ex. D-1)*.

Learned counsel submits that the said document has not been fully proved, and report of Handwriting Expert - Dr. Inderjeet Singh, cannot decide the fate of the bounced cheques, over which signatures of the respondent are not in dispute. It has also been argued that deciding the issue solely on the basis of the report of the Handwriting Expert is also against the settled proposition of law because such report is only for help the Court, if believable in all respect, for reaching to a correct conclusion.

6. On the other hand, Mr. Tarun Singla, learned counsel for the respondent, has produced the judgment of Hon'ble the Supreme Court in the case of **Babu v. State of Kerala**, Law Finder Doc Id #25123 : 2010 (9) SCC 189, and submits that until the accused is convicted, presumption under the law qua him is of innocence, and once there is a finding of acquittal by the 1st Court, presumption of innocence is fortified. In support of his submission, learned counsel for the respondent further refers to paragraph No. 19 of the said judgment, which says as under:-

“19. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse. the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference ”

7. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

8. It would be relevant to notice that this is defense of the accused/respondent that the amount of the cheque had been returned to the

complainant and the account for the same was also settled. In regard to the settlement, a compromise deed dated 25.07.2008 was prepared, which has also been proved on record by the respondent. In this regard, the finding recorded by learned Trial Court, in Paragraph No. 11, says as under:-

“11. I have considered the rival contentions of both the parties and with their able assistance gone the judicial file minutely. The main defence put forth in the present complaint is that the accused had returned the amount in question to the complainant and the account for the same was settled. A settlement note was also signed by the complainant on 23.7.2008. It is further argued that the complainant also executed a writing in his own hand in the presence of one Opinder Malhotra, Gurpreet Singh and Ajay Kumar, on 25.7.2008 to the said writing, it was stated that both the parties have settled their claim against each other and no dispute is left to be resolved. This defence put to the complainant during cross examination, wherein he has categorically denied execution of any such writing. During the course of cross examination, he was confronted with the writing dated 21.7.2008, which bears his signatures, however, the complainant denied his signatures thereon. Left with no option the accused examined the handwriting expert Dr. Inderjeet Singh, who compared the signatures of the complainant as appearing on the order sheets of the judicial file with the signatures on the letter written to the SSP Ldh. While tendering his detailed report the expert has opined that both the signatures are of the same person. He was cross examined at length by Id. Counsel for the complainant, but he could not extract anything which could shatter the veracity of the expert evidence. Further, the accused has also got examined Gurpreet Singh as DW 1 and Ajay Kumar as DW2, both of whom are the witnesses of the compromise dated 23.7.2008. These witnesses have reiterated in consonance with each other, that a compromise was affected between the parties and an account statement was prepared. The said compromise its Ex.D 1 on record. The defence story has also been reiterated by the accused, while stepping in the witness box as Dw3. All these witnesses were cross examined at length by Id. Counsel for the complainant, but he could not shake the credibility of these witnesses.”

9. Another important aspect in the matter is that cheque(s) [Ex. C-1] in question has been signed by the **respondent for Vishal Catering.** Meaning thereby on behalf of the sole proprietorship firm in the name of Vishal Caterers, the respondent has affixed his signatures as representative or authorized signatory. It is surprising that said firm has not been made as

an accused in the complaint by the complainant.

10. This Court has also perused legal notice, dated 19.07.2008 (Ex.C-3), which has been issued only in the name of an individual, i.e. Hari Parkash Gimra (the sole respondent), and not in the name of aforementioned proprietorship firm – Vishal Caterers.

11. Question of maintainability of the complaint for the cheques issued on behalf of the firm, being liable to pay debt has also arisen in these appeals. Having perused photocopies of the complaint; cheque (Ex.C-1); and legal notice (Ex. C-3), it is observed that complaint against an individual – Hari Parkash Gimra, for bouncing of cheque(s), which were, in fact, issued/signed by him on behalf of proprietorship firm – Vishal Caterers, is not maintainable. In this regard also, learned Trial Court has returned its findings in paragraph No. 12, which says as under:-

“12. Another point worth mentioning in the present case is that through the cheque in question has been signed by the accused as proprietor of Vishal Catering, the said firm was never made a party to the litigation. Even no notice of demand has been send to the firm of the accused. Further, the firm of the accused was not made a party in the present case. In such circumstances, I am of the considered opinion that the proceedings against the accused in his person capacity, without arraying the firm as accused are not maintainable.”

12. There is another noticeable aspect. Present appeals have been filed assailing the judgment(s) of acquittal. But, appellant has failed to address any sound arguments or any other material to show that the findings recorded by the learned Trial Court are either illegal, arbitrary & perverse, or that there was sufficient material for definite conviction of the respondent.

13. In conspectus of the above, I do not find any legal infirmity in the well reasoned judgment(s) dated 06.04.2012, passed by learned Trial Court, in Complaint Case No. 368/2, dated 30.08.2008 and Complaint Case No. 358/2, dated 28.08.2008, respectively, and/or any substantial reason or piece of evidence to interfere in the same for a meaningful and logical purpose.

14. Accordingly, **both the appeals are dismissed** being devoid of any merit.

(SANJAY VASHISTH)
JUDGE

15.05.2023

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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*