

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

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**CRM-A-749-MA-2012 (O&M)
Decided on : 17.01.2023**

Ram Chand

. . . Applicant(s)

Versus

Ram Nath and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. G.C. Shahpuri, Advocate
for the applicant(s).

Mr. Balkar Singh, Advocate
for respondent No.1.

Mr. Pawan K. Jhanda, AAG, Haryana
for respondent No.2.

SANJAY VASHISTH, J.

1. It is surprising for the Court that respondent No.1 was acquitted vide impugned judgment dated 27.04.2011, and application for leave to appeal was never argued since the year 2012/2013. Therefore, this Court does not find any ground to make its exercise on the application for grant for leave to appeal, and then to hear arguments in appeal for the purpose of its admission. Thus, counsel for both the sides are asked to address their submissions as a whole in the application for grant for leave to appeal itself i.e. CRM-A-749-MA-2012.

2. Complainant – Ram Chand (applicant herein) has filed present appeal against the judgment dated 14.08.2012, passed by Ld. Sessions Judge, Yamuna Nagar at Jagadhri, in Criminal Appeal No.75, dated 18.05.2001, whereby, respondent No.1 (accused) was acquitted for the

offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity 'NI Act').

3. Complainant – Ram Chand filed one criminal complaint bearing No. 1118 of 2008, dated 18.10.2008/22.04.2010, under Section 138 of NI Act, against respondent No.1 (accused), alleging that cheque bearing No. 230675, dated 15.09.2008, for an amount of Rs.1,60,000/-, drawn on State Bank of Patiala, Branch Tejli, Yamuna Nagar, issued by accused in regard to the discharge of his existing liability, was dishonored by the Bank memo dated 17.09.2008, with remark of “insufficient fund”. Thereafter, requisite procedure as per NI Act of serving of the legal notice etc., was completed and complaint referred herein-above was instituted against accused (respondent No.1).

4. Vide order dated 03.01.2009, Court of Ld. Additional Chief Judicial Magistrate, Jagadhri, summoned the accused under Section 138 of NI Act, and after serving notice of accusation on 26.04.2010, accused was subjected to face trial. After completion of trial, Ld. Trial Court found that accused is not guilty, and accordingly, while dismissing the complaint, accused was acquitted for the alleged offence, vide judgment dated 27.04.2011.

5. Assailing the judgment of acquittal, complainant – Ram Chand, made first attempt by way of appeal before the Court of Ld. Additional Sessions Judge, Yamuna Nagar at Jagadhri (Ld. Lower Appellate Court), by way of Criminal Appeal No. 75, dated 18.05.2011, and lastly, vide judgment dated 14.08.2012, Ld. Lower Appellate Court held that the appeal filed by the complainant is not maintainable, hence, not required to be decided on merits.

Hence, the complainant (applicant herein) made another attempt along with an application for condonation of delay of 437 days in filing the appeal before this Court. The application for condonation of delay (CRM-53572-2012) was allowed by this Court vide order dated 22.08.2013.

6. Today, case is being heard on merits.

7. It is argued by counsel for the applicant that once the cheque has been issued in discharge to the existing liability, and there is no denial to the signature, there is a presumption in law against the accused that cheque has been issued by him against the existing liability, and thus, the offence is found to have been committed by him until he overcomes the presumption with some believable evidence. Counsel for the applicant, while referring to the documentary evidence i.e. C1 to C8 and CW1/A & CW2/A i.e. statements of account of complainant and accused argues that in view of the admission made by the accused of his liability to pay the amount, nothing else was required for its proving and thus, accused is bound to be held guilty, especially in view of the law of presumption.

8. Mr. Balkar Singh, learned counsel for respondent No.1 (accused), while pointing out the evidence led by him, submitted that presumption of Section 139 of NI Act, will not be applicable in the present case, because the witness Hem Raj (DW1), appeared on his own before the Ld. Trial Court, and got examined during trial, and proved the execution of receipt dated 15.10.2008 as Ex.D1.

9. This Court has also examined the statement of said witness – Hem Raj (DW1), who has admitted his signature on the said document. In fact, evidence of Hem Raj (DW1) is required to be read with the statement of expert witness i.e. Sumit Arora, who appeared as handwriting expert, and

proved that the signature of applicant/complainant – Ram Chand, marked as Q1, present on receipt (Ex.D1) has been compared with the standard signatures of Sh. Ram Chand (applicant/complainant) available on Vakalatnama, complaint, affidavit, specimen signatures sheet, and statement, respectively, which are there on the record of the present case. After examination, opinion is given that the disputed and standard signatures in the name of Ram Chand are written by one and the same person.

10. Thus, handwriting expert Sumit Arora proved his opinion as Ex.D2 on record. For convenience, statement of said witness is reproduced hereunder:

“I am M.Sc forensic Science. I have qualified the national eligibility test conducted by UGC in the subject of forensic science. I am a law graduate also. During my Msc course I have gained experience from various forensic laboratories, the details of which are mentioned in my letter head pad. So far I have given opinion in more than 1500 cases in various courts of Punjab, Haryana, Rajasthan, Uttarkhand and Chandigarh.

In the present case I have examined the dispute signature marked as Q1 present on receipt Ex.D1 and compared it with the standard signatures of Shri Ram Chand, present on Vakalatnama, complaint, affidavit, specimen signature sheet and statement respectively in the present case file. After examination I am of the opinion that disputed and standard signature in the name of Ram Chand are written by one and the same person. The detailed report in support of opinion is

Ex.D2. I have taken the photographs of disputed and standard signatures which are pasted on photo charts Ex.D3 to Ex.D5. The negative of these photographs are Ex.D6 to D34 which are correct and free from any kind of retouching and may be read as part of my statement.

xxxxx By Shri S.D. Kishore, Advocate.

It is wrong to suggest that the signature present on Ex.D1 and signatures present on complaint of Shri Ram Chand do not tally with each other. It is correct that each and every letter of the signature disputed as well as standard is written by one and the same person. The disputed signature Q1 and standard signatures S1 to S9 are written with different pen and ink. It is wrong to suggest that I am deposing falsely. Court did not assess my fees in the present case. I have received a sum of Rs.5000/- from the party for my examination and evidence in this case.”

11. Further, the relevant findings recorded by Ld. Trial Court is also reproduced hereunder:-

“17. It is admitted that accused has availed loan from the complainant and had given cheque Ex.C1 as security to the complainant, but loan amount is disputed by the accused. It has been argued by defence counsel that accused availed loan of Rs.7000/- from the complainant, but complainant filed his blank cheque of his own to the tune of Rs.1,60,000/-. However, accused repaid the cheque amount of Rs.1,60,000/- to the complainant vide receipt dated 15-10-2008 Ex.D1. It is

worthwhile to mention that on record the witness to Ex.D1 Hem Raj has admitted his signature on receipt Ex.D1. Hem Raj of his own appeared in the court and has examined as court witness to receipt Ex.D1. He deposed that he endorsed his signature on receipt Ex.D1 in good faith as he is close friend of the accused. He stated that in his presence no money was advanced by the accused to the complainant. Thereafter, he was repeatedly summoned by the court for his cross examination and he appeared before the court on issuance of bailable warrant. In his cross examination he stated that he is literate and endorsed his signature after reading the document. With the testimony of Hem Raj, it is evident that Ex.D1 was validly executed. Hem Raj cannot be said to be interested witness as he stated that of his own he appeared in the court and he has received no summon from the court. He stated in his examination in chief that on assurance of accused he endorsed his signature on receipt Ex.D1. He claimed ignorance of the recital of Ex.D1. He stated that in his presence no money was paid by accused to the complainant. But in his cross examination he stated he endorsed his signature on the document after thoroughly reading the contents of receipt Ex.D1, he endorsed his signature on receipt Ex.1.

18. To prove receipt Ex.D1, defence counsel has examined expert witness Sumit Arora. He has compared the signature of complainant on Ex.D1 with his admitted signature and he has given his finding that signature of complainant on Ex.D1 and

his admitted signature belong to one person i.e. complainant. In such circumstances, receipt Ex.D1 is duly proved by attesting witness Hem Raj coupled with expert report Ex.D2. Learned counsel for complainant has advanced no argument to controvert receipt Ex.D1. Keeping in view receipt Ex.D1, it is evident that accused has repaid cheque amount of Rs.1,60,000/- to the complainant. Thus, there is no legal liability on part of accused towards the complainant. It is worthwhile is mention that complainant presented the cheque Ex.C1 for encashment in the bank on 16-9-2008. He received cheque amount on 15-10-2008 and complaint was filed on 18-10-2008 i.e. at the time no legal existing liability on par of accused was subsisting towards the complainant. Accordingly, Point-A is answered in favour of accused and against the complainant.”

12. In addition, counsel for respondent No.1 (accused) has also argued that the legal notice dated 07.10.2008, was allegedly issued by the applicant (complainant), however, before expiry of the requisite period of 15 days, complaint was instituted on 18.10.2008. Thus, he argues that filing of such complaint is not maintainable, and was worth to be dismissed on this ground alone. In support of his submissions, learned counsel for respondent No.1 places reliance upon the judgment of Apex Court rendered in **Yogendra Pratap Singh Vs. Savitri Pandey and another**, 2014(4) R.C.R. (Criminal) 321, from where, he refers to judgment of Hon’ble Apex Court rendered in **M/s Kusum Ingots & Alloys Ltd. v. M/s Pennar Peterson Securities Ltd.**, 2000(2) RCR (Criminal) 275, and submits that several ingredients are required to be satisfied for making out a case under Section

138 of NI Act, which are reproduced herein-below:-

- “(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability.*
- (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier.*
- (iii) that cheque is returned by the bank unpaid. either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank.*
- (iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.*
- (v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.”*

Thus counsel argues that complaint is instituted within 12 days of issuing of legal notice, which is non-compliance of mandatory condition, thus complaint itself was not maintainable on the day of its filing in Court.

13. In view of reasons discussed and findings recorded herein-above, and after examining of the evidence available on record, as well as argument of learned counsel for respondent No.1, which is supported with the judgment of Hon’ble Apex Court i.e. **Yogendra Pratap Singh’s** case (supra), this court do not find any substantial reason for expressing any different view against the judgment passed by Ld. Trial Court, while acquitting respondent No.1 (accused).

14. Accordingly, in view of the above, I do not consider it to be a fit

case for grant of special leave to appeal under Section 378(4) Cr.P.C., as this Court does not find any infirmity or perversity in the impugned order passed by the Court below.

Dismissed.

(SANJAY VASHISTH)
JUDGE

January 17, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*