

CRM-A-1551-MA-2016
Date of Decision: 05.09.2023

VS.

2. The applicant/complainant had filed the present complaint with the averments that the applicant was running a Emu Farm at Sirsa, but she wanted to sell the same, as she could not manage the affairs of the said farm properly. The respondents/accused were already engaged in the business of Emu and Rabbits in Sirsa and she approached them for selling the Emu Birds of her farm.

As per the applicant, the respondents agreed to purchase the Emu Birds for a sum of Rs.8,50,000/- on 01.01.2014. In discharge of their liability, the respondents No.2 and 3 paid Rs.50,000/- in cash to the applicant and issued a cheque bearing No.609460 dated 01.01.2004 for a sum of Rs.8,00,000/- in favour of the applicant/complainant. When the applicant presented the said cheque, the same was dishonoured with the remarks “Funds Insufficient” vide the memo dated 09.01.2014. The applicant got a legal notice dated 27.01.2014, issued to the respondents and called upon them to make the payment within a statutory period of 15 days. Since the respondents were failed to make the payment, the complaint under “Act” was filed by the present applicant.

3. Learned counsel for the applicant vehemently argued that there was sufficient evidence to prove the charge against the respondents. The applicant had examined Ram Rakha, Clerk as CW-1 and Kamal Goyal, Manager Axis Bank as CW-2. Even the applicant herself appeared as a witness as CW-3 and exhibited C-1 to Ex. C-14 to prove the case. Further, the Trial Court had not considered the presumption under Section 139 of the “Act” in favour of the applicant, in the correct perspective and the onus was on the respondents to rebut the said presumption. Apart from that, the respondents had failed to lead any evidence to rebut the said presumption and the complaint was liable to be allowed by the Trial Court.

4. Having considered the submissions made by learned counsel for the applicant, in the light of the evidence led by the complainant and the findings recorded by the Trial Court, this Court finds that there is no substance in the submissions raised by learned counsel for the applicant.

5. The applicant had instituted the present complaint with the basic

allegation that she had sold the Emu Birds of her farm to the respondents for an amount of Rs.8,50,000/-. As per applicant, Rs.50,000/- were paid in cash, whereas for the balance consideration, cheque No.609460 dated 01.01.2004 for a sum of Rs.8,00,000/- was issued by the respondents. It is also admitted case of the applicant that there was no close relations or business transactions between the applicant and the respondents. Rather a deal was struck between the applicant and the respondents for the first time, as per the case of the applicant. Whereas, on the other hand, respondents had categorically denied that they had no business dealings with the applicant/complainant of the present case. In such a situation, it was obligatory on the part of the applicant to place on record sufficient evidence to show that she owned Emu Birds farm, as alleged by her. Apart from that, she was also bound to prove that any transaction had taken place or some document was executed with regard to the sale of Emu Birds by the applicant to the respondent. Even no receipt or writing was proved on record by the applicant to show the said transaction. The Trial Court had rightly observed that it was highly improbable that a prudent person like the applicant would giveaway Emu Birds of her farm without any documentation and the witnesses. Even otherwise, Emu Birds were quite expensive and it is unbelievable that the Emu Birds were shifted without execution of any document/receipt/writing in this regard. Thus, the applicant had failed to discharge the initial burden itself and from the evidence of the applicant itself, the presumption under Section 139 of the “Act” stood rebutted. In fact, the applicant completely failed to prove the offence against the respondents and they have been rightly acquitted by the Trial Court.

6. Even otherwise, I have gone through the judgment passed by the

Trial Court and found that there is no material illegality, illegality or perversity in the impugned judgment, warranting any interference by this Court. The Trial Court has correctly held that the very basic ingredient of the offence under Section 138 of the “Act” that the cheque must be issued “for discharge of some legally enforceable debt” has not been proved by the applicant/complainant.

7. It has been held by the Hon’ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate

Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR**

(Criminal) 62 : 1996 CriLJ 2867, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

8. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, there is no illegality in the impugned judgment dated 13.06.2016 passed by the Court of Judicial Magistrate Ist Class, Sirsa and the

impugned judgment is ordered to be affirmed.

09. Sequally, there is no merit in the application filed by the present applicant/complainant and the same is ordered to be dismissed.

10. Pending applications, if any, are also disposed off, accordingly.

05.09.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No