

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

CRM-A-1884-MA-2018

Date of Decision: 13.04.2023

JASBIR SINGH

...Applicant

Versus

M/S KAPIL UDYOG AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Nancy Vashisht, Advocate
for Mr. NamitKhurana, Advocate
for the applicant.

HARSH BUNGER, J. (Oral)

The instant application has been filed under Section 378(4) of the Code of Criminal Procedure, for grant of leave to appeal against impugned judgment dated 18.04.2018 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby, the criminal complaint filed by the applicant/complainant under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act'), has been dismissed and respondent/accused (Kapil Aggarwal) has been acquitted of the notice of accusation served upon him.

2. Brief facts of the case are that the applicant-complainant has filed a complaint under Section 138 of the N.I. Act against the respondents-accused, wherein it was alleged that the complainant was running an industry in the name and style of M/s Jasbir Rolling Mills, Buria Chowk, Jagadhri and was one of the partners in that firm. As per the complainant, the respondent-accused had been doing the business of sale and purchase of '*chakka patti*' and thus the parties to the complaint were known to each

other. It was alleged that in the evening of 10.03.2016, respondent No.2/accused contacted the complainant and requested for an amount of Rs.1.20 lac on the pretext that he had to purchase sheet material from a factory in cash. As per the complainant, the respondent No.2/accused had told the complainant that due to some hurdle in the bank transactions, he could not arrange the said amount and assured that he will be able to arrange the said money within 5-6 days from the bank. As per the complainant, the respondent/accused No.2 assured that if the complainant gave him an amount of Rs.1.20 lac, then he will issue a post-dated cheque of dated 16.03.2016, which shall be readily encashed on its presentation. As per the complainant, he gave an amount of Rs.1.20 lac to respondent No.2/accused and after receiving the said amount, the respondent/accused No.2, being proprietor of respondent/accused No.1 and in discharge of his existing legal liability towards the applicant-complainant, issued a post-dated cheque bearing No.073107 dated 16.03.2016 in the sum of Rs.1.2 lac drawn on '*Bank of India, Jagadhri Branch*'. It is alleged that when the complainant presented the said cheque for encashment, the same was dishonoured by the bank vide Memo dated 17.03.2016 with the remarks 'Account closed'. Thereafter, a legal notice dated 23.03.2016 was issued by the applicant/complainant to the accused, calling upon the respondent-accused to make the payment within the stipulated period and upon failure of the same, the aforesaid complaint under Section 138 of the N.I. Act was filed.

3. In the preliminary evidence, the complainant got recorded his statement and finding a *prima facie* case, the respondents/accused were summoned for having committed an offence punishable under Section 138

of the N.I. Act. Subsequently, notice of accusation was also served upon the respondent-accused vide order dated 31.08.2016.

4. In evidence, the applicant-complainant examined himself as CW1 and tendered the following documents :-

<i>Sr. No.</i>	<i>Exhibits</i>	<i>Documents</i>
<i>1</i>	<i>Ex. CW1/A</i>	<i>Affidavit</i>
<i>2</i>	<i>Ex. C1</i>	<i>Original cheque</i>
<i>3</i>	<i>Ex. C2</i>	<i>Return memo</i>
<i>4</i>	<i>Ex. C3</i>	<i>Copy of legal notice</i>
<i>5</i>	<i>Ex. C4</i>	<i>Postal receipts</i>
<i>6</i>	<i>Ex. C5</i>	<i>Postal receipts</i>
<i>7</i>	<i>Ex.C6</i>	<i>Reply dated 12.04.2016 to legal notice</i>

5. The complainant further got examined the following witnesses, who tendered their respective documents, which are given in the tabulated form as under :

<i>Sr. No.</i>	<i>Witnesses examined</i>	<i>Documents tendered</i>
<i>1</i>	<i>Sh. Krishna Lal, CTO Bank of India, Jagadhri Branch, Jagadhri as CW2</i>	<i>Authority letter as Ex.CW2/A</i>
		<i>Attested copy of specimen signature of accused as Ex.CW2/B</i>
		<i>Attested copy of cheque return register as Ex.CW2/C</i>
		<i>Attested copy of statement of account from 1.1.2009 to 30.12.2009 of accused firm as EX.CW2/D</i>
<i>2</i>	<i>Sh. KrishanLal, Bank of India, Jagadhri as CW3</i>	<i>Attested copy of authority letter as Ex.CW3/A.</i>

		Attested copy of cheque leaf status inquiry as Ex.CW3/B and Ex.CW3/C.
		Attested copies of cheque Nos.073115, 073114, 073109, 073108, 073118 and 073116 as Ex.CW3/D to Ex.CW3/I
		Attested copy of statement of account as Ex.CW3/J.
3	Sh. Ajay Mohan Pallwal, Handwriting & Finger Print Expert as CW4	Affidavit Ex.CW4/A in his examination in chief.
		Report of Handwriting and finger print expert as Ex.CW4/B and enlarged photographs of signatures as Ex.CW4/C to Ex.CW4/J.
4	Sh. Amandeep Singh as CW5	Affidavit Ex.CW5/A in examination in chief

6. After the closure of evidence of the applicant-complainant, the statement of respondent No.2-accused under Section 313 of the Code of Criminal Procedure, was recorded, wherein all the incriminating material was put to him, to which he stated that he had not borrowed the alleged amount of Rs.1.20 lac from the complainant and neither he had issued the cheque in question. It was further the stand of respondent No.2/accused that the cheque in question does not bear his handwriting or signatures. It was also stated that the cheque pertains to an account which had been closed for the last ten years and maintained that he had been supplying stainless steel circle sheets to the applicant/complainant for the last approximately 15 years and the applicant-complainant used to come to his office and he has

no idea how his cheque reached the hands of the complainant. It was averred that he has no liability towards the applicant-complainant.

7. Respondent no.2-accused did not bring any evidence in his defence, which was subsequently closed by Court order.

8. The learned trial Court, after appreciating the evidence, dismissed the complaint filed by the applicant-complainant vide judgment dated 18.04.2018 and accordingly, acquitted respondent No.2-accused of the notice of accusation served upon him.

9. In the backdrop of the afore-stated circumstances, the present application for grant of leave to appeal has been filed before this Court.

10. I have heard learned counsel for the applicant/complainant and gone through the impugned judgment dated 18.04.2018 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri.

11. Here, it would be apposite to refer to few judicial pronouncements regarding the scope and parameters, in which, interference can be made in a judgment of acquittal.

12. In '*Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479*', Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate

court is competent to reverse the decision of the trial Court depending on the materials placed.”

13. In '*Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748*', Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

14. Coming to the case in hand, the learned trial Court, after appreciating the evidence on record, observed as under:-

“ 16. In order to rebut the presumption under Section 139 of the Act, the accused has cross-examined the complainant and his witnesses. As per the complainant, the accused is well known to him and therefore, the accused had borrowed Rs.1.20 lac on 10.3.2016 from the complainant on the pretext that the accused had to purchase sheets of steel and that he will repay the same within a week. The accused also issued the cheque in question dt.16.3.2016, for the said amount as a post dated cheque on the same day, but it got dishonoured for the reason 'account closed' when presented to bank. On the contrary, the accused has taken a defence that he had been supplying sheets of steel to the complainant for last 15 years and the complainant used to visit him at his office. Accused has denied borrowing Rs.1.20 lac from complainant and stated that he has no idea how his cheque came in possession of complainant and also denied his signature and hand writing on the cheque.

17. It is not disputed that the complainant is running an industry titled M/s Jasbir Rolling Mills and the accused is into the business of sale of sheets of steel. It is also not disputed that both the parties are known to each other on account of their business.

18. It is pertinent to mention that the accused in his reply dt.12.04.2016 Ex.C6 to the legal notice of complainant dt.23.03.2016 had submitted that the accused had no concern with the cheque and the same did not bear his signature or hand writing. However, during cross-examination of complainant and his witnesses as well as in his statement under Section 313 Cr.P.C., accused did not dispute the fact that the cheque in question belonged to his bank account, though, he disputed his signature and writing over the cheque. The complainant examined bank witness CW3, who brought previously utilized cheques of the accused belonging to the same series as the cheque in question and proved photo copies of the same as Ex.CW3/D to Ex.CW3/I. The complainant got the signatures over these cheques compared with the disputed signature of accused on the cheque in question Ex.C1 from documents expert CW4 who opined that the admitted signature of accused on Ex.CW3/D to Ex.CW3/I matched with the disputed signature of accused on the cheque in question Ex.C1. The expert witness also opined that the standard signature S1 & S6 are 'closely similar' with disputed signature whereas standard signature S2 to S5 and S7 are written in different style compared to S1 & S6. Thus, possibility cannot be ruled out that the cheque in question does not bear signature of accused. Moreover, the cheque in question was dishonoured for the reason 'account closed'.

19. CW3, bank witness has deposed that the bank account of accused pertaining to the cheque in question was closed in the year 2009. Moreover, statement of bank account of accused Ex.CW3/J shows that cheques bearing no.73108 to 73118 were used between 19.9.2009 to 08.12.2009 by the accused. The cheque in question bears no.73107 and is dated 16.3.2016. It is highly improbable that the accused would have kept the cheque in question since 2009 and would have issued it to the

complainant in the year 2016 especially when the other cheques of subsequent numbers of the same series were utilized in theyear2009 itself.

20. The accused has disputed financial capacity of the complainant. Complainant stated that he had Rs.30,000/- available with him whereas rest of the amount was taken by him from his two sons namely Amandeep Singh and Gagandeep Singh. Amandeep Singh, appearing as CW5 deposed that he had given Rs.80,000/- to his father and Rs.10,000/- was given by his brother Gagandeep to his father whereby a total sum of Rs.1.20 lac was lent to the accused by his father in his presence on 10.03.2016. However, this witness stated in his cross-examination that the amount of Rs.80,000/- given by him to his father was taken by him from his wife to whom he used to give Rs.10,000/-per month for saving. Moreover, this witness also stated that in March, 2016 he was working in a company whereby he used to get Rs.50,000/- per month salary. It is pertinent to mention that CW5, Amandeep stated in his cross-examination that on 10.03.2016, he was on the first floor of his house when the accused had borrowed the money from his father who were at the ground floor. He also stated that his brother Gagandeep was also with him at the first floor and that the conversation between the complainant and accused did not take place in his presence nor he knows about it. Thus, it can be said that the amount of Rs.1.20 lac was not given to accused in presence of CW5, Amandeep and he is just deposing a hear say facts.

*21. There is no written acknowledgement/ pronote/receipt to suggest that accused borrowed Rs.1.20 lac from the complainant. It is pertinent to mention that Hon'ble Punjab & Haryana High Court in **Suresh Vs. Narender Gautam 2016(1) RCR(Crl.),798** has further held that where the complainant fails to prove that he had advanced the amount to the accused and where **no***

facts on the basis of which interference can be made by this Court in the judgment under challenge.

16. When the findings given by the trial Court are considered in the light of the legal position indicated above; no interference is called for; especially when the appellant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 18.04.2018 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri.

17. No other argument was raised.

18. In view of the above discussion, the instant appeal is bereft of any merit and the same is accordingly dismissed. The judgment dated 18.04.2018 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri is upheld.

19. All pending application/s, if any, shall stand closed.

April 13th, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No