

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

**CRM-31603-2017 in/and
CRM-A-2157-MA-2017
Date of Decision: 21.07.2023**

M/s Shri Surya Swami Automobiles

. . . . Applicant/appellant

Vs.

Subash Chand

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Ms.Varuna Singh, Advocate, for
Mr. Madan Pal, Advocate, for the applicant/appellant.

Mr.Vishwajeet Singh, Advocate, for
Mr. Ashish Gupta, Advocate, for the respondent.

DEEPAK GUPTA, J.

Complaint to prosecute the accused (respondent herein) under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the Act'] was filed by the complainant (appellant herein) before the Ld. JMJC, Karnal. In that complaint bearing CIS No.NACT/0000643/2016, respondent has been acquitted vide judgment dated 14.06.2017. Appellant is aggrieved by the said acquittal and so, has filed this application seeking Leave to Appeal.

2. Trial Court record reveals that complaint was filed by the appellant-M/s Shri Surya Swami Automobiles, through its power of attorney Krishan Kumar, pleading therein that the said firm is dealer of Farmtrac Tractor and that Jai Bhagwan, the managing partner of the firm, is conversant with the facts of the case through whom the complaint is being filed. Accused-respondent was alleged to have purchased a tractor on 23.04.2015 for an amount of ₹6,53,000/-, which included ₹6,30,000/- as

cost of the tractor and ₹23,000/- as other miscellaneous expenses. The accused got the tractor financed from Tata Capital Financial Services Ltd., Karnal for an amount of ₹4,53,000/-. It was alleged in the complaint that accused assured to pay the remaining amount of ₹2 lakh and in order to discharge the said liability, issued cheque No.012972 dated 31.12.2015 for an amount of ₹1,77,000/- drawn on Axis Bank Ltd., Jind, assuring to pay the remaining amount of ₹23,000/- in cash. It was alleged that cheque was dishonoured on presentation vide Memo dated 01.01.2016; and on re-presentation vide memo dated 30.01.2016 with the remarks 'funds insufficient'. Notice dated 13.01.2016 through counsel, was sent to the accused asking him to make payment of the cheque amount within 15 days of the receipt of this notice but in vain, compelling the complainant to file the complaint.

3. In preliminary evidence, Sh. Krishan Kumar, power of attorney holder of the complainant, appeared as CW1. On the basis of the statement made by him and the documents produced, accused was summoned to face trial. Notice of accusation was served to prosecute the accused under Section 138 of the Act, to which he pleaded not guilty. Sh. Krishan Kumar as power of attorney holder of the complainant faced cross-examination as CW1. After conclusion of the complainant's evidence, statement of the accused under Section 313 Cr.P.C. was recorded, in which he pleaded that he had made payment of ₹2 lakh in cash to the complainant. He further pleaded that complainant had given him old tractor of 2014 model instead of 2015 model for which the amount was paid. A complaint regarding this fraud and cheating has already been filed by him (accused),

which is pending before the ld. JMIC, Assandh. Accused further pleaded that he did not have any legal debt or liability and that cheque in question had been misused by the complainant in collusion and connivance with M/s Tata Capital Financial Services Limited. After hearing both the sides, acquittal was recorded by the trial Court.

4. It is contended by learned counsel for the applicant/appellant that signatures on the cheque were not disputed by the respondent-accused and so, there was presumption under Section 139 of the Act in favour of the complainant, which the accused failed to rebut. It is further contended that respondent did not even respond to the legal notice sent to him prior to filing of the complaint and so, the impugned judgment of acquittal is liable to be set aside.

5. On notice, respondent made appearance through his counsel and contested the application.

6. Having considered submissions of both the sides and having perused the trial Court record, I find no merit in the application.

7. First and foremost point to be noted is that during his cross-examination, CW1 was confronted with a receipt dated 23.04.2015 Ex.D1, for an amount of ₹2 lakh issued by the complainant i.e., M/s Shri Surya Swami Automobiles in favour of the accused. CW1 candidly admitted that said receipt had been issued by his firm. Bill Ex.D1/A reveals that tractor was purchased on that very day i.e. 23.04.2015 by the accused for an amount of ₹6,50,000/-. This bill/cash memo is also not disputed by the complainant. It is own case of the complainant that accused had got the tractor financed for an amount of ₹4,53,000/- and that cheque in question

was issued to pay the remaining amount of ₹2 lakh. Complainant through CW1 has admitted correctness of the receipt Ex.D1 revealing payment of ₹2 lakh to the complainant on 23.4.2015 itself. This fully supports the defence pleaded by the accused in his statement under Section 313 Cr.P.C. that he had made payment of ₹2 lakh to the complainant in cash and thus, he did not have any legal debt or liability.

8. Apart from above, learned trial Court has rightly noticed that the complaint is stated to have been filed through its managing partner Jai Bhagwan, but said Jai Bhagwan never appeared in the witness box. CW1 Krishan Kumar, who entered in the witness box as power of attorney holder of the complainant, could not answer various material questions put to him during cross-examination.

9. Further, though the legal notice is stated to have been issued on 13.01.2016, but no such legal notice has been produced or proved on record. Rather the legal notice placed on record as Ex.C4 is dated 12.02.2016.

10. In view of the aforesaid circumstances, learned trial Court did not commit any error in recording acquittal of the accused/respondent.

11. Consequently, no ground is made out to grant leave to appeal and as such, the application is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

21.07.2023

Vivek

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No