

232

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

CRM-15784-2018

in/and

CRM-A-821-MA-2018

Date of Decision: 11.04.2023

SUBHASH KUMAR

...Applicant

Versus

RAM KUMAR AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amit Singla, Advocate
for the applicant.

HARSH BUNGER, J.

CRM-15784-2018

There is delay of 06 days in filing the accompanying appeal.

For the reasons recorded in the application, the same is allowed and delay of 06 days in filing the accompanying appeal is condoned.

Criminal Misc. Application stands disposed of accordingly.

CRM-A-821-MA-2018

The instant application has been filed under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of leave to appeal against impugned judgment dated 20.01.2018 passed by learned Sub Divisional Judicial Magistrate, Ratia, whereby, the criminal complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, has been dismissed and the respondents have been acquitted of the charges framed against them.

Brief facts of the case are that applicant/complainant-Subhash Kumar filed a complaint against respondents i.e. respondent No.1-Ram Kumar, proprietor of M/s Ram Kumar Dharampal, Commission Agent and respondent No.2-Rajesh Kumar son of Sh.Ram Kumar, Manager/Agent/Authorized Representative of M/s Ram Kumar Dharampal, Commission Agent, under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act'). As per the applicant-complainant's version, he and the accused persons used to work on profit sharing basis and after the settlement of accounts with respondent-accused No.2 (Rajesh Kumar), the respondents-accused were under liability to pay Rs.8.24 lakhs and a writing was also executed in this regard. It is alleged in the complaint that upon demanding the afore-said amount on numerous occasions by the complainant, respondent No.1 finally, in order to discharge his legal liability, issued a Cheque No.843584 dated 05.06.2017 for Rs.8.24 lakhs, drawn at 'Punjab National Bank, Branch Ratia, Fatehabad.' However, upon presentation, the said cheque was returned back dishonoured vide Memo dated 06.06.2017 with remarks "*Account closed*". Upon this, the applicant-complainant issued a legal notice dated 13.06.2017, calling upon respondents-accused to make the payment within the stipulated period. Upon failure of respondents-accused to make the payment, a complaint under Section 138 of the Negotiable Instruments Act was filed by the applicant-complainant.

On the basis of preliminary evidence, the respondents-accused were summoned to face trial under Section 138 of the Negotiable Instruments Act and subsequently notice of accusation was also served upon them on 18.09.2017, to which, they pleaded not guilty and claimed trial.

In order to prove his case, the applicant-complainant stood into the witness box as CW1 and closed his evidence after tendering the following documents :-

<i>Sr. No.</i>	<i>Exhibits</i>	<i>Documents</i>
<i>1.</i>	<i>C-1</i>	<i>Copy of writing dated 25.11.2015.</i>
<i>2</i>	<i>C-2</i>	<i>Cheque No.843584 dated 05.06.2017 for Rs.8.24 lac</i>
<i>3</i>	<i>C-3</i>	<i>Memo dated 06.06.2017</i>
<i>4</i>	<i>C-4</i>	<i>Legal notice dated 13.06.2017</i>
<i>5</i>	<i>C-5 & C-6</i>	<i>Postal receipts</i>

At the closure of the complainant's evidence, respondents-accused were examined under Section 313 of the Cr.P.C., wherein, they denied all the incriminating evidence as incorrect. It was categorically stated that they neither issued any cheque in applicant-complainant's favour nor they are under liability to pay the cheque amount. It was further stated that the respondents-accused have worked with M/s Lakhmi Chand Shiv Kumar and in the year-2013, they handed over the cheque in question to one Bhuvesh Kumar along with the application for closure of bank account and said Bhuvesh Kumar, had misused the cheque by handing it over to the applicant-complainant.

In the defence evidence, the respondents-accused examined Prem Chand, Clerk as DW-1, Ripin Kumar, Clerk as DW-2 and have tendered documents Ex.D-1 (reply to the notice), Ex.D-2 (letter of Vyappar Mandal Association), Ex.D-3 (bank statement); Mark A (letter dated 22.06.2017) and closed their defence evidence.

Learned Sub Divisional/ Judicial Magistrate, Ratia, after appreciating the evidence, acquitted the respondents-accused of the charges framed against them vide impugned judgment dated 20.01.2018 and

dismissed the complaint under Section 138 of the N.I. Act. Accordingly, the present application seeking leave to appeal along with appeal has been filed before this Court.

I have heard learned counsel for the applicant and gone through the paper book as well as impugned judgment dated 20.01.2018 passed by learned Sub Divisional Judicial Magistrate, Ratia.

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.

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.”

In the case of '**Arulvelu v. State represented by the Public Prosecutor, 2009(4) RCR (Criminal) 638**', the Hon'ble Supreme Court has observed as under:-

*“39. In **Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450**, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this*

judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above :

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

*40. This Court in a recently delivered judgment **State of Rajasthan v. Naresh @ Ram Naresh, 2009(11) SCALE 699** again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused..."*

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.

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

“33. The complainant’s case is that the accused issued the said cheque (Ex.C-2) in discharge of his outstanding legal liability qua the alleged partnership business. The perusal of the entire complaint averments, legal notice (Ex.C-4), preliminary evidence as well as affidavit of examination-in-chief reflect that the complainant has nowhere mentioned therein about the date, month or year of issuance of the said cheque by the accused in his favour. He has also nowhere stated in his cross-examination regarding date of execution/issuance of the said cheque. Further, the complainant has neither pleaded nor proved the place of execution or issuance of the said cheque. Meaning thereby, the complainant is neither aware of nor pleaded nor even proved the date, month or year of issuance, or place of issuance of the said cheque in his favour and that too, when his dispute with the accused resulted into Panchayat of respectables wherein he was fined of Rs.01 lac. Moreover, the complainant is also not aware of the fact as to who filled the said cheque. Apparently, the said cheque (Ex.C-2) contains different handwritings and languages at drawer’s signatures space and other columns.

34. It is not the case of the complainant that he has mentioned his income or loses, if any, qua the alleged partnership business in his ITRs, or that he has reflecting the alleged outstanding of Rs.8.24 lac in his ITRs for the relevant periods. The Hon’ble Madras

*High Court in **G. Pankajakshi Amma Vs. Mathai Mathew 2004(12) SCC 83** has held that unaccounted transactions are illegal transactions and no Court can come to the aid of the party in an illegal transaction, and in such cases lost must be allowed to lie where it falls. The said proposition is again reaffirmed by the Hon'ble Madras High Court in **R. Ramaraj Vs. R. Kuppusamy 2013(7) RCR (Criminal) 133.***

35. The accuseds' case is that they have paid the entire amount outstanding towards the complainant on 26.11.2015 i.e. on the very next day of the alleged meeting dated 25.11.2015. The bare perusal of the account statement (Ex.D-3) reflect that the accused have paid Rs.3.5 lac to the complainant on 26.11.2015. It is not the case of the complainant that he has not received the aforesaid amount, rather he himself has admitted the same in his deposition. The complainant has neither pleaded nor proved any other basis qua receipt of the aforesaid amount of Rs.3.5 lac and that too, when he himself has alleged that the parties never transacted after March 2015.

36. The accuseds' case is that they have handed over the said cheque blank to Mr. Bhuvesh Kumar for closure of bank accounts. The bare perusal of Ex. Dw-1/A, Ex.Dw-1/B, Ex.Dw-2/A and Ex.Dw-2/B reflect that the accused firm applied for closure of its bank accounts on 19.09.2013, and that Mr. Bhuvesh Kumar has received the amount on behalf of the accused firm on that day itself. Further, in the facts and circumstances of the complaint and in view of the aforesaid documents (Ex.Dw-1/A, Ex.Dw-1/B, Ex.Dw-2/A and Ex.Dw-2/B), the possibility that the accused persons handed over blank signed cheques to one Mr. Bhuvesh Kumar on 19.09.2013 for closure of bank accounts cannot be ruled out, rather the same appears to be highly probable.

37. *It is not in dispute that the accused has filed a police complaint qua misuser of cheque against said Mr. Bhuvesh and the complainant. Even otherwise, it is for the accused to prosecute or not to prosecute any person regarding any of his act or conduct, and mere non-prosecution of any person is in itself not a ground to disbelieve the contentions of the other (the accused). Further, the perusal of the said cheque (Ex.C-2) quite clearly reflect that the signatures of the drawer (the accused) are in different handwriting, ink and language with that to the drawer's signatures.*

38. *The law is settled to the extent and effect that to held any person guilty u/s 138 of the said Act, it is required to prove that the said cheque has been issued qua legally enforceable debt or any other liability. However, in the facts and circumstances of present complaint, it appears that there exist no liability against the accused qua the cheque amount and, when there is/was no liability, there is no question of discharge of any such debt or liability. Hence, the said cheque was issued without any consideration and not against any debt or liability.*

39. *In order to rebut the presumptions u/s 118(1) and 139 of the said Act, the accused has to prove that the existence of the consideration was improbable or doubtful or that the same was illegal. It is settled proposition of law that mere plausible explanation or assertion is not enough for the accused to rebut the presumptions u/s 118(a) and 139 of the said Act. In view of facts and circumstances of present complaint, it appears that the accused has successfully rebutted the presumptions, in favour of the complainant, as to legally recoverable debt or liability u/s 118(a) and 139 of the said Act.*

40. *Now, the onus shifts upon the complainant to prove existence of legally enforceable debt or liability*

in his favour beyond reasonable shadow of doubt. The complainant's case is that there exist a legally enforceable debt and liability against the accused, qua the alleged partnership business, and in order to discharge the said liability, the said cheque was issued.

41. The complainant's case is that the accused had to pay Rs.8.24 lac qua his share in the alleged business, and the accused issued the said cheque of Rs.8.24 lac qua the same. It has already been concluded that the complainant's contentions as to the alleged business, settlement of accounts, accused liability to pay the cheque amount etc. are highly improbable in the facts and circumstances of the present complaint. There is nothing on record, either documentary or oral, which in turn prove the contentions of the complainant as to the alleged business, accused's liability to pay the cheque amount etc. Further, no other basis of liability on part of the accused is neither pleaded or proved on record.

42. It is settled proposition of law that once the accused successfully rebutted the presumptions u/s 118(a) and 139 of the said Act, then the complainant has to prove his assertions by leading cogent and convincing evidences and by proving the same beyond reasonable shadow of doubt. Law is also settled to the extent and effect that mere assertions are not enough and the party asserting has to prove the same by leading cogent and convincing evidence. Accordingly, it can be safely concluded that the complainant squarely failed to prove the accusation against the accused u/s 138 of the said Act.

43. In the result, the present complaint is hereby dismissed, being devoid of merits. The accused persons are hereby acquitted of the accusation under section 138 of the said Act. Their bail bond and surety bond

stands discharged. File be consigned to record room after due compliance.”

At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which has not been considered by the Court below. Even it has also not been pointed out as to how the findings are perverse and against the law and what illegality has been committed by the learned Court below.

Otherwise also, from the perusal of the above findings, it has been found that the complainant's case is that the respondents-accused issued the cheque in question (Ex.C-2) for discharging of their outstanding legal liability qua the alleged partnership business. However, a perusal of the findings returned by the learned Sub Divisional Judicial Magistrate would show that in the entire complaint, legal notice Ex.C-4, preliminary evidence as well as the affidavit of the complainant tendered in his examination-in-chief does not reflect anywhere about the date, month or year of issuance of the said cheque by the respondents-accused in favour of the applicant-complainant. Even in his cross-examination, the applicant-complainant has not stated anything regarding the date of execution/issuance of the said cheque. Even the place of execution or issuance of the cheque has neither been pleaded nor proved. Further, the applicant-complainant was also not aware as to who filled the said cheque. It has been recorded by the learned Magistrate that the alleged cheque (Ex.C-2) contains different handwritings and languages at drawer's signatures space and other columns. It has also been observed that the alleged outstanding amount of Rs.8.24 lacs was not reflected in the Income Tax Returns (ITR) for the relevant periods qua the alleged partnership business. All these facts are fatal to the case of the complainant.

Still further, it is the settled law that the presumption under Section 139 of the Act can be rebutted by raising a probable defence. In the instant case, it is the categoric case of the respondents-accused that they had paid the entire amount outstanding towards the applicant-complainant on 26.11.2015 and it is on the very next day of the alleged meeting dated 25.11.2015. A perusal of the Accounts Statement (Ex.D-3) reflects that the accused had paid Rs.3.5 lacs to the applicant-complainant on 26.11.2015. The applicant-complainant has neither pleaded nor proved that the aforesaid amount of Rs.3.5 lacs was received on some other account, especially when he himself has stated that the parties never transacted after March-2015.

Learned Sub Divisional Judicial Magistrate, Ratia, has returned the findings that the possibility of the respondents-accused had handed over blank signed cheques to one Bhuvesh Kumar on 19.09.2013 for closure of the bank accounts, cannot be ruled out, rather the same appears to be highly probable.

A perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law.

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 applicant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 20.01.2018 passed by learned Sub Divisional Judicial Magistrate, Ratia.

No other argument was raised

In view of the above discussion, I find that the judgment dated 20.01.2018 passed by learned Sub Divisional Judicial Magistrate, Ratia is

well reasoned and correct as per law and does not require any interference by this Court.

Hence, no ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

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

April 11th, 2023
shweta/gurpreet

(HARSH BUNGER)
JUDGE

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