

212 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-A-45-MA-2014(O&M)  
Date of decision: 12.04.2023

ARUN JAIN

.....Applicant

VERSUS

M/S DASHMESH CRANES SERVICES AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sachin Jain, Advocate for  
Mr. Ranjit Saini, Advocate  
for the applicant-appellant.

Dr. Deepali Verma, Advocate  
for Ms. Deipa Singh, Advocate  
for respondents No.1 to 3.

Ms. Surender Singh, Asstt. Advocate General, Haryana.

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VIKRAM AGGARWAL, J (ORAL)

CRM-A-45-MA-2014

Challenge in the present application is to the judgment dated 29.09.2010 vide which the complaint filed by the appellant under Section 138 of the Negotiable Instrument Act (for short the Act) was dismissed.

The appellant filed a complaint under Section 138 of the Act alleging that in discharge of his legal liability, the respondents had issued two cheques that is for Rs.1,00,000/- and Rs.9,00,000/- each in favour of the complainant. However, both cheques were dishonoured leading to the filing of the complaint under Section 138 of the Act. After preliminary evidence, the respondents were summoned. Notice of acquisition was

served upon them. Evidence was thereafter led by the complainant. Statement under Section 313 Cr.P.C. was recorded. In defence also, certain evidence was led.

The trial Court dismissed the complaint and while dismissing the same, directed the petitioner to refund the sum of Rs.2.71 lacs to the respondent-complainant with simple interest @ 6% per annum from the date of receiving the notice dated 26.04.2008 within a period of 15 days failing which the interest would be enhanced to 12 % per annum.

Aggrieved by the said judgment, the present appeal was preferred.

I have heard learned counsel for the parties.

Learned counsel for the appellant submits that the appellant is limiting his claim only to the direction of the trial Court with regard to refund of the sum of Rs.2.71 lacs along with interest which, in criminal proceedings could not have been done.

Learned counsel for the respondent has opposed the arguments advanced by learned counsel for the appellant and has submitted that the trial Court was justified in ordering the refund of the amount.

I have considered the submissions made by learned counsel for the parties.

When the appeal was instituted before this Court, the counsel for the appellant had confined his claim only with regard to the direction regarding the refund of the amount of Rs.2.71 lacs along with interest. It finds so mentioned in the order dated 04.03.2014.

Admittedly, the complaint under Section 138 of the Act was

filed by the present appellant. After trial, the same was dismissed.

However, while dismissing the complaint the trial Court held is under:

*“As a sequel of above mentioned findings and discussions, I am satisfied that the complainant has miserably failed to prove its case against the accused person. Hence, I hereby acquit the accused facing trial of the charges levelled against them for commission of offence, punishable under Section 138 of Negotiable Instrument Act. Their bail and surety bonds stand discharged.*

*Since, it is admitted fact that accused has given Rs.2.71 lacs as part payment for the machine/crane, hence, complainant is liable to return the same alongwith simple interest at the rate of 6% per annum from the date of receiving the notice dated 26.04.2008 served by the accused to the complainant. Let the said amount be paid within a period of fifteen days, failing which complainant shall be liable to pay the above said amount with interest @ 12% per annum from the date of expiry of fifteen days till the payment. File be considered to record room after due compliance.”*

In the considered opinion of this Court, there is no provision under which the complainant could have been directed to refund the amount paid to him by the respondents accused and if any amount was due towards them, it would have been open for them to claim the same from the complainant in accordance with law. The trial Court clearly fell in error by passing the aforesaid directions regarding refund of the amount which was clearly beyond the scope of criminal proceedings.

In view of the aforementioned facts and circumstances, while

upholding the judgment of the trial Court with regard to dismissal of the complaint, the direction with regard to refund of the sum of Rs.2.71 lacs along with interest the set aside, the same being illegally and arbitrary.

Petition is accordingly disposed of.

12.04.2023  
himanshu

(VIKRAM AGGARWAL)  
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No