

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

CRM-A-1629-MA-2019

CRA-AS-64-2023

Date of Decision: 16.02.2023

MUKESH

...Applicant/Appellant

Versus

SUNIL KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Jatin Hans, Advocate
for the applicant/appellant.

HARSH BUNGER, J.

CRM-A-1629-MA-2019 has been filed under Section 378(4) of the Code of Criminal Procedure, for grant of leave to appeal against impugned judgment dated 09.04.2019 passed by learned Judicial Magistrate Ist Class, Bhiwani, whereby, the criminal complaint filed by the applicant under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act'), has been dismissed and respondent (Sunil Kumar) has been acquitted of the charges framed against him.

2. Briefly, the applicant-appellant (complainant) filed a complaint under Section 138 of the N.I. Act against the respondent-accused on the allegation that the respondent-accused had borrowed a sum of Rs.2 lacs from the applicant-appellant (complainant) and in order to discharge his legal liability, the respondent-accused had issued a cheque bearing No.166855 dated 28.12.2015, amounting to Rs.2 lacs with the assurance that the same would be honoured upon presentation; however, when the said cheque was presented for encashment, the same was returned un-cashed with memo dated 02.01.2016 with the remarks that "CTS cheque

required”. Thereafter, the applicant-appellant (complainant) served a legal notice dated 22.01.2016, calling upon the respondent-accused to make the payment; however, since the payment was not made, accordingly, the above-said complaint under Section 138 of the N.I. Act was filed by the applicant-appellant (complainant).

3. On the preliminary evidence, the learned Judicial Magistrate Ist Class, Bhiwani, summoned the respondent-accused. Thereafter, notice of accusation was served upon the respondent-accused on 05.01.2018 for the commission of offence punishable under Section 138 of the N.I. Act, to which, he pleaded not guilty and claimed trial.

4. In order to prove the guilt of the respondent-accused, the applicant-appellant (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. P1</i>	<i>Original cheque bearing No.166855 dated 28.12.2015</i>
<i>2</i>	<i>Ex. P2</i>	<i>Return memo dated 02.01.2016</i>
<i>3</i>	<i>Ex. P3</i>	<i>Legal Notice dated 22.01.2016</i>
<i>4</i>	<i>Ex. P4</i>	<i>Postal receipt dated 22.01.2016</i>
<i>5</i>	<i>Ex. P5</i>	<i>Acknowledgment</i>
<i>6</i>	<i>Ex. P6</i>	<i>Reason for unpaid</i>

5. After the closure of evidence of the applicant-appellant (complainant), the statement of the respondent-accused under Section 313 of the Code of Criminal Procedure, was recorded and all the incriminating material was put to him, to which he pleaded complete innocence and false implication.

6. Learned trial Court, after appreciating the evidence, dismissed the complaint filed by the applicant-appellant (complainant) and acquitted the accused-respondent of the charges framed against him vide judgment dated 09.04.2019. Accordingly, the present application seeking leave to appeal has been filed before this Court.

7. In the backdrop of aforementioned facts and circumstances, the application **CRM-A-1629-MA-2019** for leave to appeal is allowed, whereupon, the appeal is numbered as **CRA-AS-64-2023**.

8. I have heard learned counsel for the appellant-complainant and gone through the paper book as well as impugned judgment dated 09.04.2019 passed by learned Judicial Magistrate 1st Class, Bhiwani.

9. 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.

10. 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.”

11. 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.

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

“10. In essence, learned counsel for the complainant has argued that accused had borrowed an amount of Rs.2,00,000/- from the complainant. In discharge of his legal liability accused handed over a cheque Ex.C1. However, the same stood dishonoured when presented for encashment with remarks “CTS Cheque required” and the accused did not make the payment of the cheque amount despite repeated requests and serving of legal notice on him by the complainant. Hence, he has committed an offence punishable under Section 138 of the Act and he be punished for the same.

11. On the other hand, learned defence counsel has argued emphatically that the accused has been falsely implicated in this case by the complainant as the cheque has been stolen by his brother Rakesh. He further argued that the cheque was returned due to CTS cheque required which has been mentioned in the return memo Ex.P2. Since, there is no cause of action available with the complainant to file the present complaint, therefore, a prayer for dismissal of the complaint has been made.

*12. At the outset, it is pertinent to mention that the complainant in his cross-examination stated that the drawee bank has returned the cheque in question with a report “insufficient funds” whereas on the cheque return memo the report is **Refer to Drawer, CTS cheque required**. The circumstances which has been mentioned on cheque return memo Ex.P2 i.e. CTS*

Cheque required shows that the cheque was invalid and stale at the time of presentation. Under Section 138 of NI Act only valid cheques which are not honoured due to insufficient funds, stop payment, account closed, signature mismatch etc. for which fault can be attributed to the accused are adjudicated upon. Neither the complainant averred that the cheque in dispute was handed over deliberately and intentionally to the complainant in order to keep his legal claims at bay. Although the law pertaining to cheque dishonor is in evolutionary phase but in the present case the complainant could have examined any bank official producing account statement of the accused from which it could have been deduced that the accused had insufficient funds and issued the cheque in order to cheat the complainant. The accused has also taken a defence that one Rakesh who is related to the complainant might have stolen the cheque. Where the cheque itself is invalid that does not furnish any ground to the complainant for bringing his case within the purview of Section 138 of Negotiable Instruments Act, 1881.

13. Accordingly, the present complaint of the complainant is hereby dismissed and the accused is hereby acquitted of all the accusations leveled against him.”

13. The 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. Appellant-complainant had miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

14. 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 09.04.2019 passed by learned Judicial Magistrate Ist Class, Bhiwani.

15. No other argument was raised.

16. In view of the above discussion, the instant appeal is bereft of any merit and the same is accordingly dismissed. The judgment dated 09.04.2019 passed by learned Judicial Magistrate Ist Class, Bhiwani is upheld.

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

February 16, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No