

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

CRM-A-238-2019

CRA-AS-66-2023

Date of Decision: 17.02.2023

MUKHTIAR SINGH

.... Applicant/Appellant

Versus

MANJEET SINGH

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Nitin Rampal, Advocate
for the applicant/appellant.

HARSH BUNGER, J.

CRM-A-238-2019 has been filed under Section 378(4) of the Code of Criminal Procedure, for grant of leave to appeal against impugned judgment dated 29.09.2018 passed by learned Judicial Magistrate Ist Class, Jalalabad (W), whereby, the criminal complaint filed by the applicant-appellant (complainant) under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act'), has been dismissed and respondent (Manjeet Singh Kamboj) 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 with the allegation that the respondent-accused had borrowed a sum of Rs.4 lacs from him and in order to discharge his above-said legal liability towards the applicant-appellant (complainant), the respondent-accused had issued two post-dated cheques bearing No.00018 dated 05.06.2016 for Rs.2,00,000/- and Cheque No.000020 dated 25.07.2016 for Rs.2,00,000/-, in favour of applicant-appellant (complainant) with the assurance that the

same would be encashed upon presentation; however, when the said cheques were presented for encashment, the same were dishonoured on 04.08.2016 due to “Funds Insufficient”. Thereafter, the applicant-appellant (complainant) demanded the said amount from the respondent-accused either in cash or by depositing the sufficient amount in his (accused) concerned account with his banker but the same was not paid; upon which, the applicant-appellant (complainant) served a legal notice dated 30.08.2016 upon the respondent-accused, calling upon him to make the payment of the cheques. Since the payment was not made within the prescribed period; accordingly, the afore-said complaint under Section 138 of the N.I. Act was filed.

3. On the preliminary evidence, learned Judicial Magistrate Ist Class, Jalalabad, summoned the respondent-accused. Thereafter, notice of accusation was served upon the respondent-accused on 28.09.2016 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. C1</i>	<i>Original cheque dated 05.06.2016</i>
<i>2</i>	<i>Ex. C2</i>	<i>Memos of SBI dated 04.08.2016</i>
<i>3</i>	<i>Ex. C3</i>	<i>Return memo dated 04.08.2016</i>
<i>4</i>	<i>Ex. C4</i>	<i>Original cheque dated 25.07.2016</i>
<i>5</i>	<i>Ex. C5</i>	<i>Memo dated 04.08.2016 of SBI</i>
<i>6</i>	<i>Ex. C6</i>	<i>Return memo of HDFC Bank dated 04.08.2016</i>
<i>7</i>	<i>Ex. C7</i>	<i>Demand notice dated 30.08.2016.</i>
<i>8</i>	<i>Ex. C8</i>	<i>Original postal receipt dated 30.08.2016</i>
<i>9</i>	<i>Ex. C9</i>	<i>Demand notice envelop dated 30.08.2016 along with AD</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, wherein the entire incriminating facts and circumstances were put to him, to which he pleaded innocence and false implication. It was specifically pleaded by the respondent-accused that he had not received any amount from the applicant-appellant (complainant).

6. Learned trial Court, after appreciating the evidence, dismissed the complaint filed by the applicant-appellant (complainant) under Section 138 of the N.I. Act and acquitted the accused-respondent of the charges framed against him vide judgment dated 29.09.2018. 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-238-2019** for leave to appeal is allowed, whereupon, the appeal is numbered as **CRA-AS-66-2023**.

8. I have heard learned counsel for the appellant and gone through the paper book as well as impugned judgment dated 29.09.2018 passed by learned Judicial Magistrate 1st Class, Jalalabad.

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, held as under:-

“11. In the present case, there is plea of the accused that it is not legally recoverable debt then accused is not liable to rebut his liability beyond the shadow of reasonable doubts but he may prove the same on balance of probabilities and in this context, even accused is not liable to adduce independent evidence but if the plea of the accused is duly proved from the evidence of complainant itself then accused may prove his plea that amount is not legally recoverable from him in the present case the case of the complainant become doubtful on the ground that perusal of document Ex. C1 dated 05.06.2016 and another cheque Ex. C4 25.07.2016 shows that the date mentioned therein and the complainant stated that he knows accused from year 2013 and further admitted that alleged amount was withdrawn by him from the bank account of his uncle/Taya on 05.07.2015 and further stated that he borrowed that amount vide these two cheques to the accused on the same date when the

accused handed over these cheques to the complainant i.e. on 05.06.2016 and 25.07.2016 that means the date of borrowing of alleged amount and date of issuance of cheques is same as per plea of complainant in his cross-examination. On the other hand, complainant admitted that he withdrew that amount from the account of his uncle on 05.07.2015 and the same amount was borrowed by accused that means there is gap of almost one year commencing from the date of withdrawal of amount on 05.07.2015 and alleged borrowed on part of accused 05.06.2017 and 25.07.2016 respectively. Then here, complainant failed to prove that for what purpose he kept that amount for almost one year at his house or with him as no person of ordinary prudence shall do that act as the complainant did. Moreover, complainant failed to give any plausible reason for keeping that amount since 05.07.2015 till date of issuance of two cheques with him and at the same, complainant is admitting that in the year 2016, there was no amount in his account to the extent of Rs.3 lacs or 4 lacs which cast doubts upon the financial capacity of the complainant that despite having no amount and his income is Rs.35,000/- to 40,000/-. Moreover, he did not examine his uncle/Taya Ji as to corroborate his pleading that he received that amount from the account of his Taya. Hence in the light of these circumstances, it becomes highly suspicious that accused is liable to the complainant and complainant is entitled to receive the amount against cheques Ex.C1 and Ex.C4 from the accused which is not a legally recoverable debts. Although, it is also admitted fact that there is no denial of account number and issuance of cheque on part of accused person but mere issuance of cheque and admission of signature on the part of accused is not sufficient to prove his liability but it must be proved that it is legally recoverable

debut because some time it happens that the beneficiary of cheques hand over the cheque to some other person and that person lodge the complaint against accused persons which is not allowed as per mandate of law and that amounts to misuse of the documents. Here, in the present complaint, complainant failed to prove legal transaction between complainant and accused and moreover, failed to prove his financially capacity to borrow the amount of Rs.4 lacs to the accused.

12. In view of the above discussion, complainant has failed to prove his case beyond the reasonable doubts. Accordingly accused is acquitted of charges framed against him, in the present case.”

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 29.09.2018 passed by learned Judicial Magistrate Ist Class, Jalalabad.

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 29.09.2018 passed by learned Judicial Magistrate Ist Class, Jalalabad is

upheld.

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

February 17, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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