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

CRR-2913-2014
Date of decision:27.03.2023

R.K. MANUJA
....Petitioner

Versus

VINOD PADIA
....Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rajesh Arora, Advocate
for the petitioner.

Ms. Shweta Sanghi, Advocate
for Mr. Aditya Sanghi, Advocate
for the respondent.

HARSH BUNGER, J. (ORAL)

Prayer in the present petition is for setting aside the impugned judgment dated 25.08.2014 passed by the Court of learned Additional Sessions Judge, Gurgaon; whereby, the respondent-accused has been acquitted on an appeal filed by him against the judgment of conviction dated 30.09.2013 and order of sentence dated 03.10.2013 passed by the Court of learned Judicial Magistrate Ist Class, Gurgaon.

2. Brief facts of the case are that the petitioner-complainant filed a complaint under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (for short `the N.I. Act') read with Section 420 of the Indian Penal Code, on the allegation that the complainant is a proprietorship firm, which deals in the manufacturing of *Hydraulic Presses* and had business relation with the respondent-accused, who had bought Triple Action Hydraulic Scrap Bailing

Press (2.50 tons) with 11 KW 960 RPM Electric Motor complete with pump unit, pipeline and all accessories for an amount of Rs.6,25,000/- along with Form-H vide invoice No.46 dated 16.05.2011. It was stated that the respondent-accused had paid only the bill amount of Rs.6,25,000/- but he did not pay the VAT amount to the complainant. It was the case of the complainant that the respondent-accused had to pay the VAT amount of Rs.78,125/- or he had to issue Form `H' before 16.09.2011, which he had failed to do. It was alleged that in discharge of this liability of the respondent-accused, he had issued a Cheque bearing No.152971 dated 16.09.2011 for Rs.75,000/- drawn on Standard Chartered Bank, Pitampura, New Delhi. However, when the said cheque was presented for encashment, the same was dishonoured and returned with the endorsement "Payment Stopped by drawer" vide return memo dated 07.10.2011. Thereafter, the complainant served a legal notice dated 13.10.2011 upon the respondent-accused and when the cheque amount was not paid within the prescribed period, the afore-said complaint was filed.

3. In the preliminary evidence, the petitioner-complainant examined himself as CW-1 and tendered affidavit Ex. CW1/A. Thereafter, the respondent-accused was summoned to face trial for the offence under Section 138 of the N.I. Act, vide order dated 11.11.2011.

4. Notice of accusation under Section 138 of the N.I. Act was served upon the respondent-accused vide order dated 22.05.2013, to which, the respondent-accused did not plead guilty and claimed trial.

5. In order to prove his case, the petitioner-complainant examined himself as CW-1 and tendered his affidavit Ex.CW1/A.

6. Upon closure of evidence by the petitioner-complainant, the statement of the respondent-accused under Section 313 of the Cr.P.C was

recorded, wherein all the incriminating material on the file was put to him, which was denied by the respondent-accused. The respondent-accused had denied his liability to pay anything to the petitioner-complainant. However, no defence evidence was led.

7. After considering and appreciating the evidence available on the file, the trial Court convicted the respondent-accused for an offence punishable under Section 138 of the N.I. Act vide judgment of conviction dated 30.09.2013 and vide a separate order dated 03.10.2013, the respondent-accused was sentenced to undergo rigorous imprisonment for a period of seven days and to pay compensation to the tune of cheque amount i.e. Rs.75,000/- to the respondent-complainant.

8. Being dis-satisfied with the afore-said judgment of conviction and order of sentence, the respondent-accused preferred an appeal before the Court of Additional Sessions Judge, Gurgaon, which came to be registered as Criminal Appeal No.73 dated 31.10.2013. Similarly, the petitioner-complainant also filed an appeal, seeking enhancement of sentence, which came to be registered as Criminal Appeal No.40 dated 05.06.2014.

9. Both the aforesaid Criminal Appeals were heard by the learned Additional Sessions Judge, Gurgaon and came to be decided vide common judgment dated 25.08.2014; whereby, the appeal filed by the petitioner/complainant for enhancement of sentence was dismissed and the appeal filed by the respondent-accused came to be allowed and the judgment of conviction and order of sentence passed by the trial Court against the respondent-accused was set aside and the respondent-accused was acquitted.

10. It is against this judgment of acquittal, the present revision petition has been preferred by the petitioner/complainant.

11. Learned counsel for the petitioner/complainant submits that the learned lower Appellate Court has erred in law and facts in allowing the appeal filed by the respondent-accused and setting aside the well reasoned judgment of conviction and order of sentence passed by the trial Court. Learned counsel for the petitioner submits that the lower Appellate Court has wrongly acquitted the respondent on an untenable reason that the respondent-accused had furnished the form `H' during the pendency of the complaint and therefore, it has been wrongly held that the respondent-accused had not committed any offence under Section 138 of the N.I. Act. Accordingly, it is prayed that the instant petition may be accepted and the judgment dated 25.08.2014 passed by the lower Appellate Court may be set aside and the judgment of conviction and order of sentence passed by the trial Court may be restored.

12. On the other hand, learned counsel for the respondent has supported the judgment passed by the lower Appellate Court and while referring to the said judgment *ibid*, it is submitted that the lower Appellate Court has correctly appreciated the facts as well as material on record and had rightly allowed the appeal filed by the respondent-accused and acquitted him.

13. Accordingly, it is prayed that considering the limited scope of revisional jurisdiction, no interference is required in the judgment dated 25.08.2014 passed by the lower Appellate Court and the revision petition may be dismissed.

14. I have heard learned counsel for the parties and perused the paper book with their able assistance.

15. It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity

apparent on the face of the judgment under challenge.

16. Hon'ble Apex Court in ***Johar and others v. M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:-

> *"17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal."*

17. The factum of powers of the revisional Court dealing with the revision against acquittal being extremely limited was reiterated by the Hon'ble Supreme Court in the case of ***K. Ramachandran v. V.N. Rajan & Anr. 2010(5) RCR (Criminal) 237***, wherein it was held as under:-

> *"This question has been considered in the celebrated judgment of AkaluAhir&Ors. v. Ramdeo Ram [(1973) 2 SCC 583], where, after considering the judgments of D. Stephens v. Nosibolla [1951 SCR 284], Logendranath Jha v. Polailal [1951 SCR 676], K.C. Reddy v. State of Andhra Pradesh [(1963) 3 SCR 412] and Mahendra Pratap Singh v. Sarju Singh [(1968) 2 SCR 287] this Court came out with categories of case which would justify the High Court in interfering with the finding of acquittal in revision:*
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> *"(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the appellant- accused;*
>
> *(ii) Where the Trial Court has wrongly shutout evidence which the prosecution wished to produce;*

> *(iii) Where the appellate Court has wrongly held the evidence which was admitted by the Trial Court to be inadmissible;*
>
> *(iv) Where the material evidence has been overlooked only (either) by the Trial Court or by the appellate Court; and*
>
> *(v) Where the acquittal is based on the compounding of the offence which is invalid under the law."*

> *Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal. In this very judgment though in paragraph 10, this Court did not generally approve of the appreciation of evidence by the Trial Court Judge and held it to be not perfect or free from flaw and further observed "the Court of appeal may be justified in disagreeing with the conclusion, but it does not follow that on revision by a private complainant, the High Court is not entitled to reappreciate the evidence for itself as if it is acting as a Court of appeal and then order a re-trial."*

18. In the case of ***Hydru v. State of Kerala, {2004 (13) SCC 374}***, the Hon'ble Supreme Court has held as under:-

> *"3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against*

acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court".

19. In the case of ***Satyajit Banerjee v. State of West Bengal, 2005(1) RCR (Crl.) 723***, the Apex Court laid down that revisional jurisdiction, at the instance of the complainant has to be exercised by the High Court only in very exceptional cases, where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice.

20. Considering the case in hand, the learned lower Appellate Court, after appreciating the entire evidence on record, while acquittingthe respondent, vide its judgment dated 25.08.2014, has returned the following findings :-

"7. I have heard learned counsel for the parties and have gone through the record of the case.

8. Learned counsel for the appellant-accused has argued that the complainant sold the machine against the bill Ex.C5 and the sale was against the Form H, however, for security the cheque no.152971 dated 16.9.2011 was issued but after a short period, the Form-H was given to the complainant and the complainant has submitted the same before the sale tax authority, therefore, in these circumstances there is no liability to pay anything to the complainant, hence in the said circumstances the appellant-accused is liable to be acquitted in the interest of justice.

9. On the other hand, learned counsel for the respondent-complainant refuted the said contentions and *argued that the accused issued the cheque Ex.C1 in discharge of his liability which was dishonoured by the banker of the appellant on account of stop payment, therefore, the accused has rightly been held guilty by the learned trial court and also requested to enhance the sentence.*

10. Keeping in view the arguments advanced by learned counsel for the parties and perusing the record of the case, it came into the notice of the court that there is no dispute with regard to the issuance of the cheque and dishonour of the same on account of stop payment. It is required to be seen whether the appellant is under obligation to make the payment to the tune of Rs.75,000/- or not. The document Ex.C5 speaks that the machine was sold in a sum of Rs.6,25,000/- and the amount has been paid. The said document also speaks that the sale was against Form-H. Undoubtedly, the appellant issued the cheque as security on account of non-furnishing of Form-H. There is nothing on record which may speak about this fact that on what date the Form H is required to be furnished by the accused. There is no written agreement or clause on the file. Complainant admitted this fact that he has received the Form H which has been submitted before the sale tax authority, however till date sale tax authority has not given any date. In brief, the liability of the appellant-accused to pay an amount of Rs.75,000/- if any is against government in the shape of VAT/tax. If the Form H was not furnished then in this eventuality, the appellant was under obligation to pay an amount of Rs.75,000/-. However, the said amount can be collected by the Government or by the purchaser and would liable to be deposited with the Government. The only question which has been raised and hotly contested by the parties is that the transaction was effected on 16.5.2011 while the Form H was given to the complainant *on 28.2.2012. Anyhow, the Form-H has been furnished in the financial year of 1.4.2011 to 31.3.2012. Nothing has been decided by the sale tax authority till date. The liability of the accused if any is against the Sale Tax Authority and not against the respondent because he can give the Form H to the purchaser or can deposit the VAT with sale tax authority. Now there is no legal and enforceable liability against the complainant.*

11. As a result of the aforesaid discussion and keeping in view the facts and circumstances of the present case, the appeal titled as M/s Krystal Industries Vs. M/s Padia Export is dismissed. The appeal titled as VinodPadiaVs. RK Manuja is allowed. The impugned judgment and order of sentence are set aside and the appellant-accused VinodPadiais acquitted. Copy of this judgment be retained in connected criminal appeal no.40 of 5.6.2014 titled as M/s Krystal Industries Vs. M/s Padia Export. Lower court file along with a copy of this judgment be sent back and after due compliance file be consigned to record room."

21. Keeping in view the legal position as indicated in foregoing paras, I do not find any illegality or infirmity with the impugned judgment/order, apparent on the face of the same, which may call for any interference by this Court, while exercising its revisional jurisdiction. There is nothing on the record to show that the Court below had exceeded its jurisdiction or refused to exercise jurisdiction, while passing the impugned judgment/order. The impugned judgment/order is certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. No procedural irregularity or illegality has been pointed out. Impugned judgment/order is based upon proper appraisal and appreciation of evidence and as per law.

22. Therefore, there is no merit in the present criminal revision petition and the same stands dismissed accordingly.

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

March 27, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No