

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

CRM-A-1269-2023

Date of Decision: December 19, 2023

M/s Raaz Engineers & Infratech

...Applicant-Appellant

Versus

Shivalik Buildtech Private Limited and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Geeta Rani, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant application under Section 378(4) CrPC is preferred against judgment of acquittal dated 07.07.2023 passed by learned Judicial Magistrate Ist Class, Panipat in criminal complaint no. NACT/843/2018 dated 11.04.2018 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

2. The facts, in brief, are that the applicant firm had obtained a work contract from Paharpur Cooling Towers Limited, in pursuance of which the applicant installed machines and set up the work site in Aligarh. The work assigned was delivered to the respondents-accused and it was settled that the respondents will pay Rs. 13,29,373/- to the applicant for installation and removing the said machines from the work site. In discharge of their liability, the respondents issued cheque no. 998624 dated 07.12.2017 for Rs.4,00,000/-, cheque no. 998625 dated 10.12.2017 for Rs. 4,50,000/- and cheque no. 998573

dated 15.12.2017 for Rs. 4,79,373 in favour of the applicant. However, on presentation, the cheques were dishonoured vide memo dated 11.12.2017, 15.12.2017 and 18.12.2017 respectively with the remarks 'funds insufficient.' Thereafter, on assurance of accused aforesaid cheques were again presented in the bank for encashment but also, these three cheques were again dishonoured on 17.02.2018 with remarks 'funds insufficient'. Thereafter, legal notice dated 14.03.2018 was served upon the respondents but since they failed to make the requisite payment, a criminal complaint under Section 138 of the NI Act was lodged.

3. On the basis of material available on record, the accused were summoned. On finding a *prima facie* case against the accused, a notice of accusation was served upon them for the commission of an offence under Section 138 of the NI Act, to which they pleaded not guilty and claimed trial. Subsequently, the accused were tried and acquitted vide the impugned judgment dated 07.07.2023.

4. Learned counsel for the applicant-appellant contends that the defence of the accused that the cheques were given as security is self-contradicting as in their statement under Section 313 of the CrPC, the respondents had deposed that they had nothing to do with Paharpur Cooling Towers Limited. They further stated that the applicant was motivated to misuse the cheques in question because the contract was taken away from them and given to the respondents. Moreover, the respondents have admitted to the signatures on the disputed cheques. However, soon after the cheques were dishonoured, the respondents paid the amount due to the applicant through NEFT. Further, as per the minutes of the meeting dated 11.01.2018, the

applicant agreed to having received Rs. 13,00,000/- from the respondents in

lieu of sand and metal aggregates worth Rs. 13, 28, 383/-. This payment was made for the raw materials while the cheque was issued towards expenses incurred by the applicant towards installation and removal of machinery from the work site.

5. It is further argued that Satya Prakash Rai, Manager/Representative of Paharpur Cooling Towers Limited, who appeared in the witness box as DW2 has duly admitted that the applicant had installed the machinery on the work site and incurred expenses around Rs. 15,00,000/- to Rs. 20,00,000/-. The dishonoured cheques in question are duly admitted by the respondents and were issued by the respondents towards the amount spent by the applicant towards removal of the said machinery from the site.

6. Having heard the learned counsel for the appellant-applicant and after perusing the record with their able assistance, I am of the view that the applicant-appellant has not been able to indicate any perversity in the impugned judgment.

7. The NI Act creates a presumption in favour of the prosecution in terms of Section 118 and 139. The same are reproduced as under:

Section 118: Presumptions as to negotiable instruments.

Until the contrary is proved, the following presumptions shall be made:--

(a) of consideration:-- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

Section 139: Presumption in favour of holder

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

8. It is no longer *res integra* that these presumptions are of a rebuttable nature. While, the onus to prove the guilt of the accused rests on the prosecution, once the facts required to form the basis of these presumptions in law exist, the Court is duty bound to draw the conclusion as stipulated by the statute. However, the accused is not barred from presenting evidence in his defence. The accused is only required to raise a probable defence casting a doubt on the existence of consideration which he can do by adducing direct evidence, circumstantial evidence or even on the basis of presumptions of law or fact. Furthermore, if he can explain the circumstances that would indicate his innocence, it is not mandatory for the accused to adduce evidence as the material available on record itself can be looked at from a new perspective. Thereafter, the burden shifts back to the prosecution to reply to and negate the rebuttal made by the accused. The standard of proof in an offence under the NI Act is that of civil proceedings i.e. preponderance of probabilities. Since the burden of proof on the accused is not as heavy as the prosecution, he is not required to disprove the entire prosecution case.

9. A two Judge bench of the Hon'ble Supreme Court in ***M.S. Narayana Menon alias Mani v. State of Kerala and Another*** 2006(6) SCC 39, speaking through Justice S.B. Sinha, observed as follows:

"45. In Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 Supreme Court 1316], Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether burden of proof in terms of Section 118 had been discharged or not, relevant evidence cannot be permitted to be withheld. If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced might have gone unfavourable to the plaintiff. Such a presumption was itself held to

be sufficient to rebut the presumption arising under Section 118 of the Act stating:

"...Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or preassumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

10. A perusal of the record indicates that the applicant has admitted to having received the payment of Rs. 13,00,000/- from the respondents through NEFT, much before the issuance of legal notice and lodging of the present complaint. Further, cheque dated 07.12.2017 for Rs. 4,00,000/- was dishonoured on 11.12.2017 and the first payment through NEFT also for Rs. 4,00,000/- was made just one day later on 12.12.2017. Similarly, cheque dated 10.12.2017 for Rs. 4,50,000/- was dishonoured on 15.12.2017 and the same amount was paid through NEFT on 16.12.2017 and finally, cheque dated 15.12.2017 for Rs. 4,79,373/- was dishonoured on 18.12.2017 for the first time and the respondents made their last payment through NEFT for Rs. 5,00,000/- on 11.01.2018. As such, the timing and amount of the NEFT payments makes the defence of the respondents, that NEFT payments in lieu of the cheques was already made, probable. Further, the applicant has been unable to prove that the existence of two separate liabilities i.e. one towards the raw material and the other towards the installation of machinery. In his testimony, the applicant-complainant has mentioned that he maintains business records but has not placed anything on record to indicate that a legally enforceable debt in lieu of installation of machinery exists. He has also admitted that no written contract was made and since it was an oral agreement, no bill was generated either.

Neither a ledger account, nor any bill or document has been produced to verify the existence of the liability. In addition to this, the minutes of the meeting dated 11.01.2018 reflects the installation of machinery was well within the scope of work order of the applicant.

11. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

12. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal.

Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

- (1) *An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;*
- (2) *The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*
- (3) *Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*
- (4) *An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
- (5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

13. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

(HARPREET SINGH BRAR)
JUDGE

December 19, 2023
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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |