

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A No.390-MA of 2014 (O&M)

Date of Decision:07.11.2023

M/s Gulshan Traders Commission Agent

... Applicant/Appellant

Versus

Gurdial Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Satyam Arora, Advocate for
Mr. C.M. Munjal, Advocate
for the applicant-appellant.

Mr. Sushil K. Bhardwaj, Advocate for
Mr. Sahil Khunger, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application has been filed under Section 378 (4) of the Code of Criminal Procedure, 1973 seeking grant of leave to appeal against the judgment dated 26.02.2011 passed by the learned Judicial Magistrate 1st Class, Jalalabad (West) whereby the respondent-accused was acquitted in the complaint case under Section 138/142 of the Negotiable Instrument Act, 1881 (hereinafter referred to as the NI Act) read with Section 420 IPC.

2. Brief facts of the case are that the applicant/complainant firm being engaged in the business of commission agents and providing financial assistance to its regular customers for their agricultural and domestic needs against due entries, record of which was to be maintained in ordinary course of business, started dealings with the respondent-accused, who was an agriculturist. In the financial year 2003-2004, a debit balance of ₹5,87,950/- was outstanding towards the respondent-accused, which was carried forward in the books of account for

the next financial year i.e. 2004-2005. In order to discharge his liability, the respondent-accused issued a cheque dated 15.09.2004 bearing No.747952 for an amount of ₹5 lakhs drawn on his bank account No.8991 with the Oriental Bank of Commerce, Jalalabad in favour of the applicant/complainant with assurance of its encashment on presentation. The said cheque was presented on 18.09.2004 through Punjab National Bank, Jalalabad, however, the same was dishonoured with remarks 'insufficient funds. Thereafter, the applicant-complainant issued a demand notice dated 27.09.2004 to the respondent-accused vide postal receipt No.1485, calling upon him to pay the cheque amount within 15 days of the receipt of the notice, which he failed to do, thus, a complaint was filed against the respondent-accused in which he was acquitted vide judgment dated 26.02.2011. Aggrieved by the said judgment, the applicant-complainant prays for grant of leave to appeal by way of instant application.

3. Learned counsel appearing for the applicant/complainant argues that the respondent-accused was duly served with demand notice on 27.09.2004, which was not replied by the respondent-accused. The stand of the respondent-accused that the signed cheque was taken as security is totally incorrect, as he did not take any steps in approaching his bank to stop the payment of the said cheque nor made any sort of complaint to the concerned authority. It is also argued that during the pendency of the complaint, a civil suit was filed by the applicant/complainant on the basis of the cheque in question, which was decreed in favour of the applicant/complainant and therefore, the order of acquittal passed by the learned trial Court is bad in the eyes of law.

4. Per contra, learned counsel appearing for the respondent-accused submits that the learned trial Court has correctly appreciated the evidence adduced before it and therefore, no ground for interference is made out.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, this Court finds no ground to grant leave to appeal to the applicant/complainant. The applicant-complainant has miserably failed to prove that the respondent-accused was indebted to an amount of ₹5,40,000/-, as the entries depicted in the cash book Ex.C2 to Ex.C9 and Ex.C11 and Ex.C14 were of much lesser amount than claimed to be outstanding towards the respondent-accused. Mere entry in the ledger book of an amount of ₹5,40,000/- to be shown as outstanding amount towards the respondent-accused cannot be relied upon to conclude that the respondent-accused was indebted to the applicant-complainant to the above extent, as no entries were made in the cash books of the complainant firm with regard to dealings between the parties. Furthermore, there was no acknowledgement of the respondent-accused to the entry Ex.C1 for an amount of ₹5,40,000/- to prove that he was under legal debt or liability, despite the fact that the applicant-complainant set up a case that respondent-accused had signed against each and every entry with regard to the transactions made between the parties in the books of accounts. The testimony of DW2 Handwriting and Finger Prints Expert created a serious doubt in the manner of execution and drawing of the cheque by the respondent-accused in favour of the applicant-complainant, as signature of the respondent-accused upon the cheque in question was in different ink and the body writings were of different pen and ink; whereas the lines drawn to make cheque as account payee were of different pen and ink. Even the complainant CW1 in his cross-examination had stated that he was not aware as to who filled the cheque and that the writing of the cheque was not made in his presence except the signature of the respondent-accused.

6. 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. The presumption of innocence further gets reinforced on the acquittal of the accused. (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*).

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

(HARPREET SINGH BRAR)
JUDGE

November 07, 2023
Pankaj*

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