

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-2719-MA-2018

Date of Decision : **December 12, 2023**

DAKSH INTERIORS

.....Petitioner

VERSUS

AADHARSHILA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Kunal Dawar, Advocate
for the applicant.

KULDEEP TIWARI. J.

1. The applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for the grant of special leave to appeal against the order of acquittal dated 17.9.2018, recorded by the learned Judicial Magistrate 1st Class, Gurugram, whereby, the respondent-accused was acquitted of the notice of accusation served upon her vide order dated 4.6.2016.

2. Brief facts of the present case are that the complainant is a proprietorship firm and Sh. Rajesh Dhillon being the sole proprietor, whereas, the accused is also a proprietorship firm and managed by Ms. Sarina Aneja and is operating the business relating to civil constructions, interior and other allied services. The complainant and the accused company entered into an agreement Ex.D1, which is the work order. The

complainant was to perform the duties and the payment was supposed to be made by the accused. The work was completed and thereafter, bills were issued with details by the complainant and accordingly cheques were issued to the complainant. Till now, the amount of ₹23,85,136/- have been paid but one cheque amounting to ₹2,95,000/- Ex.CW/D was dishnoured due to “Insufficient Fund ”. Thereupon, legal notice dated 12.8.2014 was issued but no consequent payment was made, hence the present complaint.

3. The learned trial Court concerned after examining the entire evidence led by the complainant, as well as by the accused, concluded that the accused has been able to rebut the presumption under Section 118-A read with Section 138 of the Negotiable Instruments Act and the cheque in question was not issued for a valid consideration/legally enforceable debt, or liability, and consequently recorded the order of acquittal (supra).

4. Learned counsel for the applicant submitted that the Court below has failed to appreciate the fact that the signatures on the cheque were not only admitted, but issuance of the cheque was also admitted by the accused-respondent and the present amount was pending towards the VAT, which was to be paid by the accused and not by the complainant, which was admitted by the accused in a e-mail communication, which took place between both the parties and was never objected by the accused-respondent and the learned trial Court concerned gave undue

weightage to the work order, wherein, it was stated that the accused was only supposed to pay service tax, but the documents including the e-mail, placed on record clearly establishes that the VAT and the service tax was supposed to be paid by the accused-respondent. Learned counsel for the applicant further submitted that there is enough material on record, which raise a statutory presumption in favour of the complainant, which is required to be rebutted by the respondent-accused. However, the respondent-accused has failed to rebut the same, whereas, the learned trial Court concerned has not considered this fact.

5. This Court has examined the impugned judgment passed by the learned trial Court concerned, wherein, the learned trial Court found the following deficiencies in the evidence led by the applicant-complainant, which read as under:-

- “(i) The complainant has failed to prove that there was some oral settlement beyond this written work order by leading cogent and convincing evidence and no supportive document has been placed on record in view of Section 92 of the Indian Evidence Act.
- (ii) The work was completed and the actual payment has already been made and the cheque in question was issued against the excess amount charged which was never allowed as per the work order, so stoppage of payment by the accused was quite justified and no legal liability stands in favour of the complainant for which the accused can be held guilty.”

6. In the instant case, the accused-respondent took a specific defence that there was no legal liability against which the cheque was issued, rather the cheque was issued inadvertently against excess payment or contrary to the work order. Though the statutory presumption as envisaged under Section 139 of the Negotiable Instruments Act arose in the instant case, however, the statutory presumption, which are rebuttable, have been successfully rebutted by the accused by leading cogent and reliable evidence and proved on record that no legal liability stands in favour of the complainant for which the accused can be held guilty.

7. Today, the learned counsel for the applicant has failed to point out any infirmity or illegality in the above findings. The impugned order, vide which the respondent-accused was discharged, is for all reasons, tantamount to acquittal.

8. Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in ***Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470*** as well as held by this Court in CRM-A-2456-MA-2018 titled “**State of Haryana Vs. Shyam Sunder** and in CRM-A-2941-2019 titled “**State of Haryana Vs. Vishal**”.

9. Therefore, this Court does not find any ground to interfere

with the order of acquittal. In sequel, the application for leave to appeal is hereby declined, it being bereft of merit, and, the impugned order of acquittal, rendered by the learned Judicial Magistrate 1st Class, Gurugram is hereby upheld.

	(KULDEEP TIWARI)
	JUDGE
December 12, 2023	
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Whether speaking/reasoned.	: Yes/No
Whether Reportable.	: Yes/No