



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

CRM-A-219-2020

Date of Decision: 16.10.2024

RAVI KANT

.....APPELLANT

VERSUS

SUKHWINDER SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Sharma (Vasudev), Advocate
for the appellant.

SANDEEP MOUDGIL, J

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 12.12.2019 passed by the Judicial Magistrate 1st Class, Pathonkot, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under Section 138 of the Negotiable Instruments Act (for short ' the Act').

2. Factual Matrix of the case leading to the filing of present petition unfolds as that the accused is engaged in business of sale and purchase of land along with complainant in a joint venture. On this score, accused is having a good family relationships with the complainant. Vide agreement to sell dated 02.11.2012, accused along with complainant and one Inderjeet agreed to purchase land measuring 190 acres in Sh. Anandpur Sahib from Sh. Vivek Mohan Mittal and that out of the joint pool, the complainant, accused and Inderjeet invested Rs. 95 Lacs/- as earnest money and all the partners invested sum of Rs. 31,66,667/- as one third share. The said agreement could not be matured and vide compromise dated 18.04.2016, Vivek Mohan Mittal

agreed to repay the entire amount of Rs. 95 Lacs/-. As per complainant, Rs. 5



Lacs/- were already received by them at the time of compromise dated 18.04.2016 and that on 20.09.2016, the entire remaining amount of Rs. 90 Lacs/- was received by accused from Vivek Mohan Mittal. On 20.09.2016 itself, accused came to the residence of complainant and in the presence of Inderjeet and Kamaljeet promised to refund the entire amount on or before 01.10.2016 and also issued the cheque bearing no. 010411 dated 1.10.2016 for a sum of Rs. Rs. 60 Lacs/- drawn on Punjab and Sind Bank, Dinanagar. (Hereinafter referred as "cheque in question"). When the cheque in question was presented by the complainant for encashment, the same was returned dishonoured vide memo dated 03.10.2016 with remarks 'Funds Insufficient'. The matter was informed to the accused, but of no use. Thereafter, a legal notice dated 22.10.2016 was served upon the accused vide postal receipt of the same day. Despite receipt of notice, accused failed to make payment. Hence, the complaint was filed but the Court below after considering the evidence adduced by the appellant and after hearing both the sides dismissed the complaint and acquitted the respondent vide impugned order dated 12.12.2019.

3. Learned counsel for the appellant contends that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the trial Court gave the benefit of acquittal to the respondent-accused on the ground that there are certain discrepancies in the version of the complainant, which culminated into being the defence of accused probable and trustworthy. Such an erroneous finding deserves to be set aside as the trial Court has utterly failed to appreciate the well proven oral as well documentary evidence of the complainant.



4. It is further contended that the trial Court has wrongly held that cheque in question was given by the respondent-accused to be used as a security cheque and the same was not issued to the appellant- complainant towards discharge of legally enforceable liability, whereas it is well settled law that handing over of security cheques *per se* would not extricate accused from discharge of liability arising from such cheques.

5. Learned counsel for the appellant contends that it is undisputed fact the cheque in question pertains to the account of the accused and the signature of the accused over the same is also not disputed. So, the finding of the learned trial court that complainant fails to prove acquaintance with the accused is totally beyond the scope evidence on record.

6. Learned counsel for the petitioner further contends that it is duly proved on record that as per Ex.C3 (agreement between the respondent-accused and the appellant-complainant) that the cheque in question was issued by the respondent-accused in favour of the appellant-complainant towards his legally enforceable liability against the complainant as well as Inderjeet. Keeping in view the last lines of Ex.C3 that in the event of non payment by accused, the partners (BHAIWAL) can proceed legally. Therefore, after expiry of the settled date i.e. 30.09.2016, the cheque in question was presented by the appellant- complainant on 01.10.2016.

7. He points out that the Trial Court failed to appreciate the proved aspect of the case and held that the liability of accused towards the complainant is maximum to the tune of Rs.30 lacs/- and not the cheque amount i.e. Rs.60 Lacs and wrongly held that the liability of accused is much lesser than the cheque amount.

8. It is further contended that once the respondent-accused has



himself admitted his signature on the impugned cheque, it is well settled position in law that it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but in spite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment is liable to be set aside.

9. I have heard learned counsel for the applicant/appellant and gone through the record.

10. From perusal of the judgment, it is apparent that the Trial Court has rightly noticed that the claim of the complainant that he along with Inderjeet and accused entered into agreement to sell dated 02.11.2016 with Vivek Mohan Mittal and that earnest money of Rs. 95 lacs/- has been jointly advanced by all three of them to Vivek Mohan Mittal in terms of agreement Ex C1 and compromise Ex C2. In order to prove advancement of amount, Ex C1 and Ex C2 (both photocopies) are produced on record by the complainant and during course of arguments, Counsel for accused argued that Ex C1 and Ex C2 are mere photocopies and that the same are not proved in accordance with Section 65 of Indian Evidence Act. Therefore, the same cannot be relied upon, moreso, mere exhibition of documents is no proof of execution of documents because photostat copy is neither a primary evidence nor secondary evidence (unless it is led under section 65 of Indian Evidence Act).

11. It is further noticed by the Trial Court that during his statement under section 313 Cr.PC, accused took the plea that his blank signed papers are misused by the complainant. Further, the accused never gave reply the



said legal notice nor took any legal action or other action against the complainant for alleged misuse of documents and cheques.

12. The Trial Court further rightly held that in the present case, as per Ex C3, the cheque in question was never meant to be deposited/ presented for encashment and the same is merely issued as security cheque, keeping in view the last lines of Ex C3 that in the event of non payment by accused, the PARTNERS (BHAIWAL) can proceed legally. After expiry of the settled date i.e 30.09.2016, the cheque in question was presented by the complainant even without asking the accused which is not permissible in the eyes of law. Further, the liability of accused towards the complainant is maximum to the tune of Rs. 30 lacs/- and not the cheque amount I.e Rs. 60 Lacs. Therefore again the complainant failed to prove that the accused is liable to the cheque amount. Moreso, it is established on record that the cheque is a security cheque and that the liability of accused is much lesser than the cheque amount. So, both the points of determination lies in favour of accused and against complainant.

13. It is a settled law as held in “***C.Antony v. K.G.Raghavan Nair, 2002 (4) RCR (Criminal) 750***” that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

14. On perusal of the judgment passed by the trial Court dated 12.12.2019, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The



ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

15. Accordingly, the leave to appeal stands declined.

16. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

16.10.2024
anuradha

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable :</i>	<i>yes/No</i>