

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

CRM-A-952-MA-2014 (O&M)
Date of decision: 07.03.2024

M/s Ashok Kumar & Sons

....Applicant/Appellant

Versus

Kamaljit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kanwal Goyal
for the applicant-appellant

Mr. Prateek Pandit, Advocate
for the respondent

HARPREET SINGH BRAR, J.

1. This instant application under Section 378(4) CrPC is preferred against the order of acquittal dated 11.06.2012 passed by learned Special Judicial Magistrate Ist Class, Kapurthala in complaint No.232/ of 2010 dated 13.05.2010 filed under Section 138 of Negotiable Instruments Act, 1881 (herein after referred as NI Act).

2. The minimal facts as necessary for disposing this application are that applicant-complainant firm sold steel and cement of Rs.1,04,978/- to the respondent-accused and the respondent, in order to partly discharge her legal liability, issued a cheque bearing No.847741 dated 09.04.2010 for a sum of Rs.1,00,000/- in favour of the applicant. Upon presentation for encashment, the said cheque was dishonoured vide memo dated 10.04.2010 bearing remarks 'Funds Insufficient'. The applicant then served a legal notice dated 17.04.2010 upon the respondent calling upon her to make the payment of the aforesaid

cheque amount, but to no avail. Thereafter, the applicant filed the complaint (supra) against the respondent wherein, the respondent was acquitted by the learned trial Court. Aggrieved by the same, the applicant-complainant has approached this Court by way of present petition.

3. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that the attorney of the applicant-complainant – Vaneet Gupta admitted in his examination-in-chief before the learned trial Court that he was not acquainted with the respondent before the alleged sale of the abovesaid material but surprisingly, sold the material amounting to lacs of rupees without any surety or security. The said attorney further placed attested photocopies (Ex.C1 to C3) of the shop records maintained by him, on record before the learned trial Court but also admitted that the said records did not bear any signatures. Moreover, the signatures of the respondent-accused on the cheque in question do not match with her signatures on the zimni orders in the Court file of learned trial Court. It appears that the respondent had signed all the said zimnies in Punjabi whereas the cheque has been signed in English. Most importantly, the said attorney of the applicant miserably failed to establish on record any legally enforceable debt against the respondent since he did not produce any ledger or account books showing the alleged transaction. Consequently, the basic ingredient of Section 138 of N.I. Act, i.e., the cheque must be ‘for discharge of some legally enforceable debt’ remains unproved by the applicant. Hence, the above-mentioned order of acquittal passed by the learned trial Court stands validated.

4. Pertinently, a three-Judge bench of the Hon’ble Supreme Court in **A.C. Narayanan vs. State of Maharashtra and another, 2013(4)**

R.C.R(Civil) 382, speaking through Justice P. Sathasivam, has made the following observations: -

“26. While holding that there is no serious conflict between the decisions in MMTC (supra) and Janki Vashdeo Bhojwani (supra), we clarify the position and answer the questions in the following manner:

a) Filing of complaint petition under section 138 of N.I Act through power attorney is perfectly legal and competent.

b) The power of attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possesses due knowledge regarding the said transactions.

c) It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder. In the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.

d) In the light of section 145 of N.I Act, it is open to the magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under section 138 of the N.I Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant of his witness upon oath for taking the decision whether or not to issue process on the complaint under section 138 of the NI Act.

e) The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.”

5. Further, 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 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.

6. 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.

7. Pending miscellaneous application(s) if any shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

07.03.2024
Neha

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