

2. This common order of mine shall dispose of both of the abovementioned appeals since they arise out of same factual background with only difference being the cheque amount, the details of which are as follows: -

Appeal before this Court	Appeal before ASJ, Jalandhar	Complaint before JMIC, Jalandhar	Cheque details
CRA-S-440-SBA-2002	CRA-No.20 of 1999	No.125/2/1997	JLA-0513418 dated 22.12.1994 For Rs.92,250/-
CRA-S-441-SBA-2002	CRA-No.21 of 1999	No.124/2/1997	JLA-0513419 dated 22.12.1994 For Rs.62,000/-

3. For the sake of brevity, the facts of the case are being extracted from *CRA-S-440-SBA-2002* titled as *The Kerala State Cooperative Rubber Marketing Federation Ltd. vs. S.L. Jain.*

4. Succinctly, the facts are that appellant-complainant being a Government undertaking, filed the complaints (supra) through its Branch Manager namely Sh. A.N. Pillai against the respondent Sh. S.L. Jain being the HUF/Karta/Partner of M/s Mahavir Rubber Industries, Jalandhar. It was alleged in the complaint that the respondent-accused purchased raw rubber bundles from the complainant in lieu of which, he issued two cheques with details mentioned above, both drawn on Bank of India, Industrial Area Branch, Jalandhar. When the cheques in question were presented to the bank for encashment, the same were returned vide memo dated 24.12.1994 with remarks ‘Exceed Arrangement’. Thereupon, a demand notice dated 24.12.1994 was sent to the respondent under registered post, asking him to pay the said cheque amounts but the same was returned undelivered with remarks ‘out of station for unknown period’. Thereafter, the appellant filed the complaints



(supra) against the respondent under Section 138 of the NI Act, before the learned trial Court, wherein, the respondent was convicted and sentenced to undergo rigorous imprisonment for a period of 9 months along with a fine of Rs.300/- and a further rigorous imprisonment in default of payment of fine. Aggrieved by his conviction, the respondent preferred an appeal against the same before the learned Additional Sessions Judge, which was allowed and his conviction and sentence was set aside. Discontented by the judgment of acquittal passed by the lower Appellate Court, the complainant has approached this Court by way of the present appeals.

5. Learned counsel for the appellant *inter alia* contends that that the respondent categorically admitted his signatures on the cheques in question and issuance of the said cheques when he stepped into the witness box as his own witness as DW1. It was also admitted by him that he was present at the address where the demand notice was served on that very day. Learned counsel for the appellant vociferously contends that Sh. A.N. Pillai had the locus standi to file the criminal complaints being the Branch Manager of the complainant-federation. Further, a power of attorney dated 28.06.1995 was executed by the Managing Director of the said federation in favour of the Branch Manager which was duly proved on record as Ex. P-5. He further places reliance on the cases ***Rakesh vs. The Sonepat District Primary Co-operative Agricultural, 2024(2) R.C.R.(Criminal) 482*** and ***Popular Motor Corporation vs. State of Kerala and Ors., 2023(4) Cri. CC 47*** in order to render support to his arguments.

6. Learned State counsel submits a detailed status report in way of an affidavit of Daman Bir Singh, PPS, Assistant Commissioner of Police (North),



Police Commissionerate, Jalandhar, in compliance of the order dated 08.05.2024, passed by this Court and the same is taken on record.

7. I have heard learned counsel for the appellant and perused the paper-book with his able assistance. It transpires that the complaints (supra) were filed by Sh. A.N. Pillai in his capacity as the Branch Manager of the complainant government undertaking in the month of January, 1995 whereas the power of attorney was executed in his favour by the complainant federation on 28.06.1995, proved on record as Ex.P5. Vide the said power of attorney, the Managing Director of the complainant federation appointed the Branch Manager as the general attorney. However, there was no clause in the in the power of attorney dated 28.06.1995, executed in favour of the Branch Manager, ratifying the acts of Branch Manager retrospectively. It comes to the fore that on the date the complaints (supra) were filed by Sh. A.N. Pillai, Branch Manager, acting on behalf of the complainant federation, there was no such power of attorney duly authorizing the Branch Manager to file the said complaints. Furthermore, the complainant federation failed to produce any evidence to prove whether it is a Corporation or a Company registered under the Companies Act or a Cooperative Society. In the matter at hand, the Branch Manager who filed the complaints (supra) had no such power of attorney executed in his favour on the date the said complaints were filed. Albeit, a power of attorney was executed in his favour, the same was done much later, i.e., after the complaints had already been filed. No clause ratifying the earlier actions of the Branch Manager was added in the same. Therefore, this Court is of the opinion that the Branch Manager was not competent to file the complaints (supra) and the learned Additional Judge rightly acquitted the respondent.



8. I have gone through the cases of ***Rakesh (supra)*** and ***Popular Motor Corporation (supra)*** relied upon by the learned counsel for the appellant. Although, reliance has been placed upon the aforesaid cases by the learned counsel for the appellant, to reinforce his arguments, the same are distinguishable from the facts and circumstances of the case at hand. It is well established that the complaint under Section 138 of the NI Act is maintainable as per the requirements of Section 142 of the said Act if it has been instituted in the name of the payee or the holder of the cheque. In case of a Company, it can very well be represented by an authorized employee as long as the complaint is filed in the name of the company. However, the employee or the non-employee, as the case may be, has to be authorized or empowered to represent the company either by a resolution or a power of attorney passed in his favour. Even a sworn affidavit authorizing the employee who is aware of the transaction under dispute to represent the company would suffice.

9. Furthermore, 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.

10. 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."

11. In view of the above discussion, this Court finds that learned counsel for the appellant has been unable to point out any perversity in the impugned judgment of acquittal dated 10.07.2001 passed by learned Additional Sessions Judge, Jalandhar in Criminal Appeal No.20 of 1999 and No.21 of 1999.
12. Hence, the present appeals stand dismissed being devoid of merit.
13. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

Reserved on : 16.05.2024
Pronounced on : 21.05.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |