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

243+326

**CRA-AS-429 of 2024
(arising out of CRM-A-1623-MA-2017)
Date of Decision: 11.12.2024**

Perry ... Applicant/Appellant

Versus

Universal Commodity Services
and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. D.K. Singal, Advocate,
for the applicant-appellant.

None for the respondents.

***

MANISHA BATRA, J. (Oral)

CRM-A-1623-MA-2017

The applicant who had filed complaint bearing No.NACT/424 of 2013 titled as *Perry v. Universal Commodity Services and another* before the Court of Judicial Magistrate 1st Class, Barnala, has filed this application under Section 378 (4) of the Code of Criminal Procedure, seeking leave to appeal against the judgment dated 31.03.2017 passed therein, vide which, the respondent No.2 has been acquitted of offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred to as "NI Act"), while dismissing the complaint, filed by the applicant.

For the reasons stated in the application, the same is allowed.

Leave to appeal granted.

On the direction of the Court, office has assigned appeal number CRA-AS-429 of 2024 to the present case.

<u>CRA-AS-429 of 2024</u>

1. Brief facts of the case are that the appellant-complainant had filed a criminal complaint under Section 138 of the NI Act against the respondents on the allegations that the respondent No.1 through its authorized signatory i.e. respondent No.2 had issued a cheque for a sum of Rs.51,200/- in favour of the complainant to discharge the legally enforceable liability of the respondent No.1. The said cheque had been dishonoured with the remarks "insufficient funds". Legal notice was sent to the respondents which was duly received and replied. The respondents failed to make payment of the cheque amount within the stipulated period thereby compelling the complainant to file the aforementioned complaint.

2. After considering the preliminary evidence, notice of accusation was served upon the respondent No.2-accused. He pleaded not guilty to the notice and claimed trial. The appellant-complainant produced oral as well as documentary evidence in support of the allegations in the complaint. Statement of respondent No.2-accused was recorded under Section 313 of Cr.P.C. In defence evidence, the respondent No.2 examined a witness and produced certain documents. After hearing the contentions raised by both the

sides and on going through the evidence produced on record, the learned Magistrate vide judgment dated 31.03.2017 dismissed the complaint thereby acquitting the respondent No.2 of the charges as framed against him.

3. Feeling aggrieved, the complainant-appellant has filed this appeal.

4. It is argued by learned counsel for the appellant that the impugned judgment is liable to be set aside as the findings as given by learned Magistrate are not sustainable in the eyes of law and are liable to be reversed. It is submitted that the solitary ground for the acquitting the respondent No.2-accused was that he was a mandate holder of the respondent No.1 and had signed the cheque as an agent only and, therefore, was not liable for the offence punishable under Section 138 of the NI Act. It is submitted that the learned trial Court while recording the findings of acquittal did not take into consideration the mandatory provisions of the NI Act i.e. Sections 26, 27 and 28 as per which, an agent who signed on a cheque was personally liable, if he signed the same without indicating that he was signing as an agent or that he did not intend to incur personal responsibility.

5. There has been no representation on behalf of the respondents even today despite the fact that their counsel had been duly informed and they had been represented by a counsel.

6. On a perusal of the impugned judgment, it is revealed that while dismissing the complaint and acquitting the respondent No.2-accused of the allegations, the learned trial Court had wrongly considered the question qua

liability of the respondent No.2 by considering him as a mandate holder. The learned Magistrate relied upon the judgment cited as **Ravi Chandran v. Subramanian** reported in 2006 (2) CCC 78 and had observed that the respondent No.2 was only a mandate holder and not the drawer of the cheque in real sense and as such he could not be held liable for the offence under Section 138 of the NI Act. However, on a careful perusal of record, this Court is of the considered opinion that the learned trial Court had misdirected itself in dismissing the complaint only by taking into consideration the ground that the respondent No.2 was a mandate holder and hence was not personally liable. The learned trial Court is shown to have not taken into consideration the relevant provisions of the NI Act i.e. Sections 26 to 28. Section 26 of this Act deals with the capacity to make promissory note, bills of exchange or cheque whereas Section 27 deals with competence of the account holder/drawer to create an agency. Section 28 further deals with liability of agent signing the promissory note, bills of exchange or cheque. As per these provisions, an agent who signs on a cheque, bill of exchange or promissory note is personally liable if he does not have indicate thereon that he signed as an agent or that he did not intend thereby to incur personal liability. The cheque Ex.C1 was signed by the respondent No.2 and this fact has not been denied by him as well. However, it is not mentioned in this cheque that the respondent No.2 was signing the same as an agent or that by signing the same, he did not intend to incur any personal liability. On the other hand, the legal notice Ex.C4 is shown to be addressed to the respondent No.2 as an authorized signatory of respondent No.1. In **Ravi Chandran's** case (Supra), the provisions of Sections 26 to 28 of the NI Act were not taken into consideration. In view of these provisions, this Court is of the considered opinion that the findings recorded by the learned trial Court as to acquittal of respondent No.2 are not sustainable since respondent No.2 had been acquitted only by considering the question that he was only a mandate holder and hence was not liable.

7. Accordingly, the impugned judgment is set aside. The appeal is allowed. The matter is remitted to the trial Court to hear the arguments afresh and decide the complaint in the light of the legal proposition as discussed above.

8. The learned trial Court shall grant not more than two opportunities to the parties to address arguments and shall make efforts to dispose of the complaint within a period of three months from today. The appellant through counsel is directed to appear before the trial Court on 10.01.2025. The trial Court shall issue notices to the respondents.

(MANISHA BATRA)
JUDGE

11.12.2024
manju

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