221 IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CRM-A-2294-MA-2017 (O&M)
Date of Decision: 09.01.2025

M/S RAM GOPAL JITENDER KUMAR COMMISSION AGENT
...Applicant-Appellant

V/S

JAGIR SINGH AND ANOTHER ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ojas Bansal, Advocate
for the applicant-appellant.

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HARPREET SINGH BRAR J. (Oral)

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 13.06.2017 passed by learned Sub Divisional Judicial Magistrate, Guhla, District Kaithal in criminal complaint No. 58/2016 filed under Section 138 of Negotiable Instruments Act.

2. The brief facts of the case are that the accused-respondent No. 1 engaged the complainant firm as his commission agent with the assurance to sell his food grains through the commission agency of the complainant firm and for that purpose the accused used to borrow advance money from the complainant firm for raising the crops and other domestic needs from time to time as per his requirement. It was further pleaded that the accused-respondent No. 1 borrowed Rs.50,000/- on 05.12.2011, Rs.1000/- on 19.12.2011, Rs. 6000/- on 20.12.2011 through cheque no. 548701,

Rs.5,000/- on 26.12.2011, Rs.10,000/- on 12.01.2012, Rs.1700/- on 24.01.2012 through cheque no. 548714, Rs.1000/- on 15.03.2012 through cheque no. 548739,, from the complainant firm and got the entries of the same made on each and every time in the account books of the complainant firm and the respondent No. 1 put his signatures on all the entries and also put his thumb impression on the entries dated 5.12.2011, 19.12.2011, 20.12.2011, 26.12.2011 and 12.01.2012 along with signatures. It was further alleged that respondent No. 1 did not sell any of his food grains after borrowing the said amounts as such the said total amount of Rs.74,700/- was carried forwarded in his account on 01.04.2012. The accused-respondent No. 1 further borrowed Rs.50,000/- on 30.04.2012, Rs.10,000/- on 04.07.2012, Rs.2000/- on 17.07.2012 through cheque no. 037848, Rs.5,000/- on 30.10.2012, Rs.5,000/- on 31.10.2012 through cheque no.37879, Rs.58,000/- on 28.11.2012 through cheque no.37894, Rs.10,000/- on 20.12.2012, Rs.2,000/- on 24.12.2012 through cheque no.13780, Rs.5,000/- on 20.02.2013 through cheque no.13797 and got the entries of the same made on each and every entry and also put thumb impressions on each of the said entries except the entry dated 04.07.2012, 30.10.2012, 31.10.2012, 24.12.2012 and 20.02.2013. Respondent No. 1 sold his wheat crop of Rs.87,414/- on 15.04.2012 through the complainant firm and after adjusting the said sale proceeds against the amounts borrowed by him, an amount of Rs.1,90,286/- remained balance to be paid by him as on 01.04.2013 to the complainant firm which amount was carry forwarded in his account. Respondent No. 1 further borrowed Rs.1,000/- on 03.04.2013 through cheque no.13803, Rs.30,000/- on 03.05.2013, Rs.10,000/- on 04.05.2013 through cheque no.30206, Rs.50,000/- on 09.05.2013 through cheque no.30215, Rs.10,000/- on 17.08.2013 and Rs.10,000/- on 30.10.2013 from the complainant firm and got the entries of the same made in the account books of the complainant firm and put his signature on each and every entry and also put thumb impressions over the said entries dated 03.05.2013, 09.05.2013, 30.10.2013. On settlement of account an amount of Rs.34,068/- were also charged as interest on 31.03.2014 in his account, with his consent. It is further pleaded that respondent No. 1 further sold wheat crop of Rs.79,974/- on 12.04.2013 and Rs.19,773/- on 21.04.2013 through the complainant firm and after adjusting the said amount an amount of Rs.2,35,607/- remained balance to be paid by him to the complainant firm on 01.04.2014 which amount was carry forwarded to his account by the complainant firm, which amount the complainant was entitled to recover from respondent No. 1 along with interest thereon @ Rs.18% per annum as per the custom and usage prevailing in the grain market at Cheeka. It is further pleaded that in discharge the said existing and legally enforceable liability of making the payment of said balance amount and interest thereon has issued the following cheque No. 045262 dated 11.08.2014 for an amount of Rs. Rs.2,45,000/-. The above cheque for the sake of brevity referred to as "cheque in question". The said cheque in question was drawn upon State Bank of Patiala, Branch Cheeka from the account of accused. The complainant presented the cheque on 11.08.2014 for collection to his banker State Bank of Patiala, Cheeka, but the aforesaid cheque was returned as dishonoured by the banker of the accused vide memo dated 11.08.2014, on the ground "Account closed". The accused intentionally and fraudulently issued the said cheque to the complainant firm after closing his account. Hence, the present complaint.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that learned Court below has opined that complainant has failed to prove the initial onus of liability of Rs. 2,45,000/- against the respondent as on 11.08.2014, even if the entire averments of the complaint are taken to be true. Further as per the respondent, the said cheque was handed over to the complainant as a security cheque at the time of obtaining loan and said cheque was blank and it only contained the signatures of accused person. Learned trial Court has further rightly concluded that even if for the sake of arguments, it is presumed that entry regarding interest is genuine, then also the outstanding liability of accused towards the complainant comes out to be merely Rs. 1,79,607 and that too on 31.03.2014 and the cheque in question is of 11.08.2014 and no interest entry after the said interest entry dated 31.03.2014 is proved on record, the question of outstanding liability of Rs. 2,45,000/- as mentioned in the cheque in question as on 11.08.2014 is not believable. The complainant is silent as to the date on which the accused issued the cheque in question and in the absence of the same, the only logical presumption would that accused had handed over the said cheque on the date which is mentioned over the cheque as it is not the case of the complainant that accused issued some post dated cheque etc. Thus,

the Court below has rightly concluded that applicant-complainant has failed to discharge the initial burden of outstanding liability of Rs. 2,45,000/- as to date of issue of cheque and thus the necessary ingredient of cheque having been issued for the existence of legally enforceable debt or existing liability was not proved.

4. 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. The reliance is placed on the judgment of Hon'ble Supreme Court passed in **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** passed 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.

5. 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.

6. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

09.01.2025
Ajay Goswami

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