

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

**CRM-A-1405-2023 (O&M)
RESERVED ON: 01.04.2025
PRONOUNCED ON:08.05.2025**

SOMNATH

.....APPELLANT

Versus

MOHINDER SINGH

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Jyoti Kumari, Advocate for
Mr. Namit Khurana, Advocate
for the applicant/appellant

SANDEEP MOUDGIL, J (ORAL)

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment and order dated 25.08.2023, passed by the Judicial Magistrate Ist Class, Karnal, 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 appellant-complainant and respondent-accused were known to each other and in the month of April,2017, the respondent-accused got booked the ticket of the son of the appellant-complainant for Singapore on giving the assurance that the respondent-accused and his associate namely Sanjeev Sharma are authorised agents and has already

settled 20-30 persons abroad. Thereafter, on being convinced, appellant-complainant, in the month of June 2017 at Karnal paid Rs.7,36,000/- to respondent-accused for sending his son and Sunil Kumar(his relative) to Ukraine for work permit and for that purpose, in the month of July 2017, original passport and other relevant documents such as Id's etc were given to the respondent-accused and Sanjeev Sharma. Thereafter, the respondent-accused informed that Visa in the name of the son of the complainant and Sunil Kumar has been approved and as a result both went to the Airport. But unfortunately, only Sunil Kumar was allowed to board the flight and he too was sent back by the Ukraine authorities after three days.

3. It was later admitted by the respondent-accused in the Panchayat that there were some infirmities in the documents which were not completed by him and also requested that he would get the same corrected and as solution to that, suggested that to obtain work permit, one has to have a travel history and as a result appellant-complainant, the son of the appellant-complainant and Sunil Kumar went to travel Thailand and in April 2018, a Panchayat was conveyed at Village Dabri, District Kandal, in which the respondent-accused and Sanjeev Sharma admitted that they have received Rs.7,36,000/- and promised to return the same.

4. To fulfil his promise, the respondent-accused issued a cheque bearing no. 000030 dated 25.05.2018 for an amount of Rs.2.50 lacs which was dishonoured by the bank vide memo dated 24.08.2018 with the remarks "Drawers Signature Differs" and thereafter, the appellant-complainant served a demand notice dated 20.09.2018 to the respondent-accused but he did not pay nay heed to it and as a result, a complaint was

filed under section 138 of the Act wherein the respondent-accused was acquitted. Hence, the present appeal.

5. It is contended 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. It is further contended that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque. It is well settled position in law that once an accused admits his signatures on the cheque, then, 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 inspite 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 dated 24.03.2023 is liable to be set aside.

6. I have heard learned counsel for the appellant and gone through the record.

7. The respondent in his statement under section 313 Cr.P.C, 1973 denied the incriminating materials put-forth by the appellant, however admitted the fact that the cheque in question bears his signature. He further

submits that he does not owe any legal liability towards complainant and stated that appellant witness has deposed falsely and the cheques were issued to the complainant as a security cheque in the year 2013 without having any outstanding dues towards the accused. Moreover, the complaint is not sustainable technically as well as factually as the person who filed the complaint is not the authorized person to file the complaint as the authority letter i.e. Ex. C-7 is itself defective for want of signatures of the authorized person as it does not bear the name of the Mahesh Yogi who has filed the present complaint rather of one Mahesh Chand, who has been mentioned as an authorized person also the complainant is not well versed with the facts of the present case. Also another point that needs due deliberation is that as per the stand of the accused, the said cheque was issued by him to the complainant as a security cheque in the year 2013. He admits his signatures on the cheque but denies the fact that the said date was also filled by him and states that why the complainant kept silence for four years and presented the cheque in the year 2017, when there was a continues default of payment on his part, meaning thereby the complainant has himself filled the date on the cheque. Now this version creates a serious doubt on the story of the prosecution and raises a probable defence in favour of the accused, who very rightly has able to rebut the presumption under Section 139 of Negotiable Instruments Act.

8. This court finds no reason to disbelieve the contentions of the respondent inasmuch as the appellant has failed to prove that the cheque was issued against the legally enforceable debt and moreover the defence put by the accused is supported by substantial proof and the accused has been able to raise a cogent doubt regarding the truthfulness of the issuance of the cheque in question and once the presumption under sections 118(A)

and 139 of the Act of 1881 stands rebutted by the accused. The burden is upon the complainant to prove that the cheque was issued by the accused in discharge of any existing legal liability which the appellant/complainant has failed to prove.

9. 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.

10. On perusal of the judgment passed by the trial Court dated 24.03.2023, 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.

11. Accordingly, the leave to appeal stands declined.

12. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

08.052024

Meenu

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No