



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CRM-A-1046-MA-2013
Date of Decision: 01.05.2025

ASHOK KUMAR

.....APPELLANT

VERSUS

S.K.SHARMA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vikram Singh, Advocate
for the applicant/appellant.

SANDEEP MOUDGIL, J

1. The application under [Section 378\(4\)](#) CrPC has been filed by the appellant seeking leave to appeal against the judgment dated 21.09.2013 passed by Judicial Magistrate 1st class, Karnal (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act').

2. Briefly, facts of the case are that the complainant-appellant is sole proprietor of M/S Ashok Feeds and the respondent-accused purchased feed worth Rs.1,20,600/- vide bill no dated 15.09.2008 from the appellant-complainant and it was in discharge of this liability that the respondent-accused issued a cheque no. 002174 of Rs.1,20,000/- dated 18.09.2008 drawn at Canara Bank Saharanpur, in favour of the appellant-complainant which when presented for encashment was returned unpaid with remarks "Account Closed" vide memo dated 23.09.2008. Thereafter statutory legal notice dated 1.10.2008 was duly served upon the respondent-accused through registered



post whereby he was called upon to make the payment of the cheque but he failed to make any payment within the stipulated time of 15 days and hence the complaint no. 6157 of 2010 was registered which was dismissed vide judgment dated 21.09.2013 hence the present appeal.

3. Counsel for the appellant contends that the trial court has erred in law while not considering the fact that all the ingredients to constitute an offence under section 138 of the NI Act read with section 142 of NI Act were duly proved against the accused-respondent wherein it is settled law that once the execution of the cheque is admitted, the presumption of section 118 and section 139 of the NI Act arises.

4. He vehemently argues that the trial court has not taken into consideration the fact that the respondent-accused knew it very well that the cheque would be dishonoured with remarks 'Account Closed' and further the ledger account maintained at the firm of the respondent-accused clearly proves that he was under a liability of Rs.1,20,600/-.

5. In addition, it is argued that trial court has erred in acquitting the respondent-accused from the charge merely on the basis that no doubt the bills have been tendered by the respondent-accused but they did not bear his signatures wherein some doubt ought to have been created over the bill in question and non-production of the ledger account of respondent-accused maintained at firm in regular course of business when there exists no dispute over the transaction between the parties.

6. Heard.

7. Having heard the counsel for the appellant and going through the case file, this court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.



8. From the perusal of the judgment by the trial court, it is evident that the court has carefully gone through the bill Ex. C1 and bills tendered by the respondent-accused Ex. D7, Ex. D9, Ex. D11, Ex. D13, Ex.D16, Ex. D18 and Ex.20 wherein on all the bills tendered by the respondent-accused, details of the goods purchased by him have been clearly mentioned but surprisingly no such details have been mentioned in the bill Ex.C1 and to prove genuineness of bill Ex.C1, complainant-appellant has tendered ledger account of business Ex.C8 maintained by him in regular course of business but my no stretch of imagination this document can be considered as the ledger account of the appellant-complainant in regular course of business.

9. Moreover, the bills which have been tendered by the respondent-accused also did not bear the signatures of the respondent-accused but once some doubt is created over the bill in question and non-production of ledger account of respondent-accused maintained at firm in regular course of business, the genuineness of the bill in question is rendered doubtful as the liability of the amount mentioned therein has nowhere been acknowledged by the respondent-accused. Meaning thereby, this was for the first time the goods were sold to the respondent-accused on credit basis. All these facts and circumstances clubbed together do create a reasonable doubt and constitute a probable defence to rebut the presumption raised under section 118 and 139 of the NI Act I.e in the absence of proper ledger account, no plausible explanation regarding the unusual manner in which the bill in question was prepared, non- tendering the delivery challan/bilty, no evidence to prove that the goods were transported interstate and no proof to show that goods were received by the respondnet-accused makes it abundantly clear that the respondent-accused has been rightly acquitted.



10. In the light of above discussion, this court is of the strong view that no fault can be found with the judgment passed by the trial court and as such the present application under section 378(4) Cr.P.C stands declined as well the appeal, having no merit stands dismissed.

11. Ordered accordingly.

01.05.2025
Anuradha

(SANDEEP MOUDGIL)
JUDGE

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