

The same view was reiterated in **V.K. Industries case (supra)**.

11. In the present case, while the trial court has exercised the discretion to condone the delay in filing the applications to set aside the ex-parte decrees, in our view, the trial court should not have imposed such an unreasonable and onerous condition of depositing the entire suit claim of Rs.1,50,00,000/- and Rs.10,00,000/- respectively in the suits when the issues are yet to be decided on merits. While considering the revision, the High Court should have kept in view that the parties are yet to go for trial and the appellants ought to have been afforded the opportunity to contest the suits on merits. When the S.L.Ps came up for admission on 1.08.2013, this Court passed the conditional order that subject to deposit a sum of Rs.50,00,000/- before the trial court, notice shall be issued to the respondents. In compliance with the order dated 1.08.2013, the appellants have deposited Rs.50,00,000/- before the trial court. Since the appellants have satisfactorily explained the reasons for the delay and with a view to provide an opportunity to the appellants to contest the suit, the impugned order is liable to be set aside.

12. The order dated 16.04.2013 of the High Court passed in C.R.P. (NPD) (MD) No.4/2013 and C.R.P. (NPD) (MD) No.5/2013, is set aside and these appeals are allowed. Delay in filing the applications to set aside the ex-parte decrees is condoned and the ex-parte decrees passed in O.S. No.3 of 2011 and O.S. No.6 of 2011 are set aside and the suits are ordered to be restored to file. The appellants shall file their written statements within a period of six weeks if not already filed. Since the suits are of the year 2011 and the respondents are stated to be senior citizens, the trial court is directed to take up the suits at an early date and dispose of the suits expeditiously. It is made clear that we have not expressed any opinion on the merits of the matter. The amount of Rs.50,00,000/- deposited by the appellants before the trial court shall be invested in a Nationalized Bank so that the accrued interest may enure to the benefit of either party. In the facts and circumstances of the case, we make no order as to costs.

Appeals allowed.

PUNJAB & HARYANA HIGH COURT

Before: Rameshwar Singh Malik, J.

CRM-A-501-MA of 2013 (O&M)

Decided on: 28.04.2015

Ashok Leyland Finance Limited (now merged in
IndusInd Bank Limited)

Applicant

Versus

Ram Kishan

Respondent

Alongwith

CRM-A-547-MA of 2013 (O&M) IndusInd Bank Limited v. Pala Ram,

CRM-A-332-MA of 2013 (O&M) IndusInd Bank Limited v. Manjeet Kaur

And

IndusInd Bank Limited v. Ravinder Singh and another

Present: Mr. Aftab Singh Khara, Advocate for the applicant.
Mr. Ramender Singh Chauhan, Advocate for the respondent in CRM-A-501-MA of 2013.
Mr. N.K.Malhotra, Advocate for the respondents in CRM-A-332-MA of 2013 & CRM-A-546-MA of 2013.
Mr. Atul Lakhanpal, Sr. Advocate with Mr. Arjun Lakhanpal, Advocate for the respondent in CRM-A-547-MA of 2013.

A. Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Complaint u/s 138 of NI Act – Acquittal of accused -- Total loan amount was Rs.10,62,280/- -- Out of this loan amount, accused had paid Rs.10,50,030.82/- -- In such a situation, there was no scope for issuing the cheque in question for an amount of Rs.3 lacs by the borrower, in favour of the complainant -- Complainant failed to justify the liability of the accused, if any, after the termination of the loan agreement – Accused rightly acquitted -- Since the Trial court has arrived at a judicious conclusion, taking one of the possible views, the impugned order deserves to be upheld.

(Para 2, 10)

B. Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Termination of loan agreement – Complaint u/s 138 of NI Act -- Acquittal of accused – Loaned vehicle was repossessed and sold by the complainant, whereas the alleged cheque in question was of date thereafter -- Once the vehicle was repossessed and sold, the agreement stood terminated and there was no occasion for the accused to issue the cheque in question -- Acquittal order passed by the Trial Court is liable to be upheld.

(Para 2, 11, 12)

C. Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Complaint u/s 138 of NI Act – Two views – Acquittal of accused -- It is the cardinal principle of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts.

(Para 14)

D. Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Indian Evidence Act, 1872 (1 of 1872), Section 45 -- Complaint u/s 138 of NI Act – Denial of signature – Expert evidence -- Acquittal of accused -- Once the accused did not accept his signatures on the cheque, complainant did not make any effort to get the signature of the accused proved by examining any handwriting and fingerprint expert, it can be safely concluded that the learned trial court committed no error of law, while passing the acquittal order.

(Para 14)

Cases referred:

1. Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Cr.) 638.
2. Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140.

3. Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657.
4. Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015).

JUDGMENT

RAMESHWAR SINGH MALIK J. (ORAL) –

1. With the consent of learned counsel for the parties in all the four cases, these four identical applications under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeking leave to appeal, are being decided together, as the facts as well as legal position in all these matters is the same.

2. In all the four cases, complaints under Section 138 of the Negotiable Instruments Act, 1881, ('NI Act' for short), filed by the present applicant-complainant against its borrowers-respondents, were dismissed by the learned trial court by passing identical dismissal orders, whereby accused in all these cases were acquitted.

3. The common pleaded case on behalf of the applicant-complainant, in all its four cases, was that accused-borrowers entered into a hire purchase agreement with the complainant, for the purpose of purchasing their respective vehicles. The loan amount was different in each case. All the four borrowers-accused had been paying their monthly installments towards repayment of loan amount, as per mutually agreed terms and conditions of the loan agreement. However, in all these four cases, loanee-accused allegedly defaulted in making the payments. Consequently, in all the four cases, vehicles of the respondents were repossessed by the lender-complainant from all the four borrowers-accused. The vehicles were sold by the applicant in every case. The borrowers allegedly issued cheques in question after selling of their respective vehicles. Since the cheques allegedly issued by the accused in every case were dishonoured on account of "funds insufficient", complainant issued legal notice to all the four accused-respondents. When the accused did not pay the cheque amount, complainant filed four complaints.

4. Preliminary evidence was recorded and after consideration of the same, learned trial court found a prima facie case against the accused-respondents under Section 138 of the NI Act. Accordingly, all the four accused were summoned. Accused-respondents appeared in each case, pleaded not guilty and claimed trial. To substantiate its allegations levelled in the complaints, complainant led its evidence in all the four cases.

5. Statements of the accused-respondents were recorded under Section 313 Cr.P.C.. All the incriminating evidence brought on record was put to them. Accused-respondents pleaded their innocence and alleged false implication. In all the four cases, accused led their defence evidence.

6. After going through the evidence brought on record and hearing the learned counsel for the parties, learned trial Magistrate held that the complainant has miserably failed to substantiate its allegations and all the four complaints filed by the applicant under Section 138 of the NI Act, were dismissed and the accused were acquitted. Hence, these four identical applications under Section 378 (4) Cr.P.C., seeking leave to appeal.

7. Learned counsel for the applicants, in all the four cases, submits that the applicant has brought on record sufficient evidence, which has clearly proved its pleaded case against the respondents. He further submits that learned trial court in each case, has misdirected itself while not appreciating evidence available on record. He next contended that the statutory presumption ought to have drawn by the learned trial court in favour of the applicant-complainant and against the accused-respondents. He concluded by submitting that since the learned trial court has miserably failed to appreciate the true factual as well as legal aspect of the matter, the impugned orders have resulted in miscarriage of justice. He prays for allowing all the four applications.

8. Per contra, learned counsel for the respondents in each case, have submitted that complainant has failed to discharge even its initial onus. On the other hand, it were the accused-respondents, who have brought on record cogent and well convincing evidence, which was rightly appreciated by the learned trial court in each case. They also submitted that the vehicle in each case has been repossessed and sold by the lender-complainant. There was no occasion for the borrowers-accused in every case, to issue the alleged cheque in favour of the applicant. They pray for dismissal of all these four applications.

9. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions advanced, this Court is of the considered opinion that all these four applications are liable to be dismissed. To say so, reasons are more than one, which are being recorded hereinafter.

10. In the case of Ram Kishan, as per the statement of account Ex.C-3 and Ex.C-10, total loan amount was Rs.10,62,280/- paise. Out of this loan amount, accused-respondent had paid Rs.10,50,030.82/-. In such a situation, there was no scope for issuing the cheque in question for an amount of Rs.3 lacs by the borrower, in favour of the complainant-applicant. The applicant-complainant failed to justify the liability of the accused, if any, after the termination of the loan agreement in the month of November, 2006. Thus, learned trial court rightly held that statement of account as on 28.3.2007 (Ex.C-10) was not a valid document. In this view of the matter, it can be safely concluded that sum of Rs.3,17,227 was not outstanding against the accused-loanee on 28.3.2007, because of which there was no occasion for the respondent, to issue the cheque in question for an amount of Rs. 3 lacs in favour of the applicant. Since the learned trial court has arrived at a judicious conclusion in this regard, taking one of the possible views, the impugned order deserves to be upheld.

11. Coming to the case of Ravinder Singh and another, vehicle was admittedly repossessed and sold by the complainant on 21.1.2009, whereas the alleged cheque in question was dated 31.3.2009. It has been held by the learned trial court and rightly so that once the vehicle had been repossessed and sold by the complainant on 21.1.2009, there was no occasion for the respondent to issue the cheque in question on 23.3.2009, because the loan agreement stood terminated on repossession of the vehicle. After due appreciation of the evidence brought on record, learned trial court has rightly passed the impugned order, which deserves to be upheld.

12. Similarly, in the case of Pala Ram, the vehicle was repossessed on 9.9.2008 and was sold on 28.1.2009 by the complainant-applicant, whereas

the cheque in question was allegedly issued by the accused-respondent as late as on 4.6.2009. Once the vehicle was repossessed and sold, the agreement stood terminated and there was no occasion for the accused to issue the cheque in question. In this case also, complainant has failed to prove its case by leading cogent evidence. Consequently, learned trial court, after discussing each and every relevant aspect of the matter, recorded its positive findings that complainant failed to prove its case and the impugned order was rightly passed, which deserves to be upheld.

13. So far as fourth case of Manjit Kaur is concerned, the vehicle was repossessed by the complainant on 31.1.2009, whereas the cheque in question was allegedly issued by the accused-respondent on 31.3.2009. Once the loan agreement stood terminated on the repossession of the vehicle, there was no occasion for the loanee-respondent to issue the cheque after a period of two months. In fact, complainant-applicant has miserably failed to bring on record cogent and convincing the to prove its case, because of which learned trial court was well justified in passing the impugned order, which deserves to be upheld.

14. It is the cardinal principle of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Cri.) 638**. It is not even argued case on behalf of applicant that the view taken by the learned trial court was not one of the possible views. Further, once the accused did not accept his signatures on the cheque, applicant did not make any effort to get the signature of the respondent proved by examining any handwriting and fingerprint expert. Under these circumstances, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld for this reason also.

15. The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been further reiterated by the Hon'ble Supreme Court, in its numerous later judgments, including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015)**. The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's case** (supra), which can be gainfully followed in the present case, read as under:-

"Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

"30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see *Dhanna v. State of M.P.*, *Mahabir Singh v. State of Haryana* and *Shailendra Pratap v. State of U.P.*) which had not been adhered to by the High Court.

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.”

(Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see *Bhagwan Singh v. State of M.P.*) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in *Bindeshwari Prasad Singh v. State of Bihar*, (2002) 6 SCC 650,

“that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view.” This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.”

16. During the course of arguments, learned counsel for the applicant could not point out any jurisdictional error or patent illegality in any of the impugned orders passed by the learned trial court, so as to convince this Court to take a different view than the one taken by the learned trial court. In fact, learned trial court has discussed each and every relevant aspect of the matter, before arriving at a judicious conclusion that the complainant has failed to prove its case under Section 138 of the NI Act. In such a situation, no interference is warranted at the hands of this Court and the impugned orders deserve to be upheld, for this reason as well.

17. No other argument was raised.

18. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that all these four applications are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference is made out.

19. Resultantly, all these four applications stand dismissed, however, with no order as to costs.

Applications dismissed.

SUPREME COURT OF INDIA

Before: M.Y. Egbal & Amitava Roy, JJ.

Civil Appeal No. 2366 of 2010

Decided on: 14.05.2015

Mahila Ramkali Devi and others

Appellants

Versus

Nandram (D) Thr. LRs. and others

Respondents

Code of Civil Procedure, 1908 (V of 1908), Order 6 Rule 17 -- Amendment of plaint -- A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure -- Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

(Para 20)

Cases referred:

1. Nahar Hirasingsh and Ors. vs. Dukalhin and Ors., AIR 1974 MP 141.