

CRM-A-412-MA-2012

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-412-MA-2012 (O & M)
Date of decision: 03.08.2015

D.K.Stone Crasher

.... Applicant/Appellant(s)

Versus

Madan Lal Gupta

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate,
for the applicant.

Mr. Rishi Nijhawan, Advocate for
the respondent.

PARAMJEET SINGH, J.

The instant application has been filed under Section 378(4) of the Code of Criminal Procedure (in short, 'Cr.P.C.') for grant of leave to appeal against the impugned judgment dated 21.11.2011 passed by the Additional Chief Judicial Magistrate, Kaithal whereby respondent-accused has been acquitted of the notice of accusation issued against him.

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Brief facts of the case are that a complaint was filed by the applicant-complainant under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'N.I.Act') alleging that the accused had in discharge of the liability towards the complainant issued cheque bearing No.CAB 00/211 338866, A/C No.01050060010 dated 08.12.2006 for an amount of ₹1,90,000/- payable at State Bank of India, Branch Mini Secretariat, Kaithal. When the complainant presented the cheque in question for collection, the same was dishonoured even second time with the remarks “Insufficient Funds”. The complainant issued a legal notice through registered A.D and UPC requesting the accused to make payment of cheque in question. The said notice was duly served upon the accused, but the accused did not make the payment. Therefore, the complaint was filed.

On the basis of preliminary evidence, the accused was summoned under Section 138 of the N.I.Act and notice of accusation was served upon him accordingly to which he pleaded “not guilty” and claimed trial.

The complainant, in order to prove his case, appeared into witness-box as CW 1 besides examining Devender as PW 2, Radhey Shyam, Clerk as PW 3, Satish Kumar Modi as PW 4, Sunil Sikka as PW 5. Thereafter, statement of the respondent-accused under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the

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respondent of the notice of accusation, served against him, vide impugned judgment dated 21.11.2011. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the parties and gone through the impugned judgment.

Learned counsel for the applicant vehemently contended that the judgment passed by the trial Court is not proper, legal and is erroneous. The trial Court has not considered the evidence of the witnesses of the complainant. The trial Court has wrongly appreciated the plea of defence that the accused had given the blank cheque as security. The trial Court has misread the contents of complaint to the effect that there was debit balance of about ₹4 lacs in the account. The accused had given the cheque in discharge of his liability.

Per contra, learned counsel for the respondent vehemently opposed the contentions of learned counsel for the applicant and supported the impugned judgment.

I have considered the rival contentions of learned counsel for the parties.

The trial Court has acquitted the respondent-accused mainly on the ground that cheque in question was not issued by the accused against a 'legally recoverable debt' and no notice was received by the accused.

It is a settled legal position that in acquittal appeal, the appellate Court is not required to rewrite the judgment or to give fresh

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reasonings when the appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial court while acquitting the respondent- accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this appeal requires to be dismissed.

Even the Hon'ble Supreme Court in the case of ***State of Goa v. Sanjay Thakran and another, (2007)3 SCC 75***, has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Hon'ble Supreme Court has observed as under:

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappraise the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected

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with the commission of the crime he is charged with."

Similar principle has been laid down by the Hon'ble Supreme Court in the cases of ***State of Uttar Pradesh v. Ram Veer Singh and others, 2007 AIR SCW 5553*** and in ***Girja Prasad (Dead) by LRs v. State of MP, 2007 AIR SCW 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

It is also a settled legal position that in acquittal appeal, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down, by the Hon'ble Supreme Court in the case of State of ***Karnataka v. Hemareddy, AIR 1981 SC 1417*** wherein, it is held as under:

*"... This court has. observed in **Girija Nandini Devi v. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124)** that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."*

Thus, in case the appellate Court agrees with the reasons and opinion given by the trial Court, then the discussion of evidence is not necessary.

I have gone through the judgment passed by the trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned

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counsel for the applicant. The trial Court while considering the oral as well as documentary evidence has clearly observed that the complainant has failed to prove his case beyond reasonable doubt. Even in the present case, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr. vs. State of Karnataka*** 2014(2) RCR (Criminal) 507 has held as under:

“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial

court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

*12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in **Tulsiram Kanu v. State**; [AIR 1954 SC 1], **Madan Mohan Singh v. State of U.P.**; [AIR 1954 SC 637], **Atley v. State of U.P.**; [AIR 1955 SC 807], **Aher Raja Khima v. State of Saurashtra**; [AIR 1956 SC 217], **Balbir Singh v. State of Punjab**; [AIR 1957 SC 216], **M.G. Agarwal v. State of Maharashtra**; [AIR 1963 SC 200], **Noor Khan v. State of Rajasthan**; [AIR 1964 SC 286], **Khedu Mohton v. State of Bihar**; [(1970) 2 SCC 450], **Shivaji Sahabrao Bobade v. State of Maharashtra**; [(1973) 2 SCC 793], **Lekha Yadav v. State of Bihar**; [(1973) 2 SCC 424], **Khem Karan v. State of U.P.**; [(1974) 4 SCC 603], **Bishan Singh v. State of Punjab**; [(1974) 3 SCC 288], **Umedbhai Jadavbhai v. State of Gujarat**; [(1978) 1 SCC 228], **K. Gopal Reddy v. State of A.P.** ; [(1979) 1 SCC 355], **Tota Singh v. State of Punjab** [1987(2) R.C.R.(Criminal) 35: (1987) 2 SCC 529], **Ram Kumar v. State of Haryana**; [1994(3) R.C.R. (Criminal) 631 : 1995 Supp (1) SCC 248], **Madan Lal v. State of J&K**; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], **Sambasivan v. State of Kerala**; [1998(2) R.C.R. (Criminal) 693 : (1998) 5 SCC 412], **Bhagwan Singh v. State of M.P.**; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], **Harijana Thirupala v. Public Prosecutor, High Court of A.P.**; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], **C. Antony v. K. G. Raghavan Nair**; [2002(4) R.C.R.(Criminal) 750 : (2003) 1 SCC 1], **State of Karnataka v. K. Gopalakrishna**; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], **State of Goa v. Sanjay Thakran**; [2007(2) R.C.R. (Criminal) 458 : (2007) 3 SCC 755] and **Chandrappa v. State***

of Karnataka; [2007(2) R.C.R.(Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

Learned counsel for the applicant has failed to show any error

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in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge. There is also a delay of 121 days in filing the instant application. No cogent reasons have been mentioned in the application for condoning the delay.

As such, application for leave to appeal is dismissed on merit as well on account of delay.

03.08.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE