

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. A-1103-MA of 2013
Date of Decision: 02.2.2015.

Ranjeet Singh

.....Applicant

Versus

Raje Ram

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate
for the applicant.

SABINA, J.

Respondent had faced trial in a complaint filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 qua dishonour of cheque dated 13.6.2011 in the sum of ₹ 10,00,000/-. Trial Court vide order dated 24.9.2013 ordered the acquittal of the respondent. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 praying for leave to appeal by the applicant-complainant.

I have heard the learned counsel for the applicant and have gone through the record available on the file carefully.

Trial Court while ordering the acquittal of the respondent has held as under:-

“14. In the present case, complainant stepped into the witness box as CW-1 and vide his duly sworn affidavit Ex.CW1/A, he reiterated all the averments as contained in his complaint. In his cross examination, he stated that

he had given the alleged loan of Rs. 10,00,000/- in cash to the accused due to their friendly relation and said amount was given by him from time to time. He admitted that he, alongwith Krishan Kumar, had filed a case against the accused before the Debts Recovery Tribunal. He further admitted that M/s India Bulls Housing Finance Ltd., Krishan Verma, Ram Singh were also respondents in the said case. He further admitted that he, alongwith Krishan Kumar, had also filed a suit for declaration and permanent injunction against the present accused on 24.10.2007. He further admitted that in the said civil suit, a compromise was arrived at between him and the accused on 18.10.2010. He admitted the compromise Ex. DA as well as his joint statement alongwith Krishan Kumar Ex. DB. He categorically admitted the fact that he and accused were engaged in litigation from 24.10.2007 till 18.10.2010.

15. On consideration of the abovesaid facts and circumstances emerging from the cross examination of the complainant, it is clear that the complainant had filed a civil suit against the accused bearing no. 940 dated 24.10.2007 titled as Krishan Kumar and ors. Vs. Raje Ram in the Court of Sh. Manpreet Singh, the then Ld. Civil Judge (Jr. Divn.), Faridabad. It is further clear that in the said case, a compromise between the parties was arrived on 18.10.2010. This Court concurs with the submission made by the learned counsel for the accused that when a party is engaged in litigation with another party, that too

an adversarial nature of litigation, it is very difficult to believe that during the pendency of such litigation, one party would advance a huge loan of Rs. 10,00,000/- to the other party without even reducing the loan transaction into any form of writing. In the present case, evidence placed on record clearly shows that litigation was pending between the complainant and the accused from the year 2007 till 2010. Hence, it is very highly unlikely that complainant could have advanced Rs. 10,00,000/- to the accused from January, 2009 to December, 2010 during pendency of litigation between them in the said period. Furthermore, no documentary evidence of any payment of the loan of Rs. 10,00,000/- has been furnished by the complainant on the record. In such circumstances, this Court is of the considered view that the accused has succeeded in discharging his burden of rebutting the presumption under Section 139 of the Act as well as alleged factum of loan transaction. Therefore, this Court finds that the cheque in question was not issued by the accused in favour of the complainant in discharge of any debt or liability as the complainant has failed to prove the alleged loan transaction in the present case.”

The reasons given by the Trial Court while ordering the acquittal of the respondent, are sound reasons. Admittedly, parties were in litigation and in the civil proceedings, compromise was effected between the parties on 18.10.2010. The litigation between the parties remained pending from October 2007 to October 2010.

Therefore, the Trial Court rightly came to the conclusion that the

plea of the applicant that he had advanced loan to the respondent from January 2009 to December 2010, was not believable. The parties would have reduced the loan transaction into writing. In the absence of any writing qua advancement of loan, in the facts of the present case, rendered the plea put-forth by the applicant that he had advanced loan to the respondent, doubtful.

Learned counsel for the applicant has failed to point out any misreading of evidence by the Trial Court which would warrant interference by this Court.

Their lordships of the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in *Ashok Kumar v. State of Rajasthan*, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC**

415.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to

both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed”

No ground is made out to grant leave to file an appeal.

Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

February 02, 2015
Gurpreet