

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

CRM-A-15-MA of 2013 (O&M)

Date of decision: 17.08.2015

Varinder Kumar

...Applicant

Versus

M/s Maniktala Traders and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Robin Dutt, Advocate for the applicant.

Jitendra Chauhan, J. (Oral)

By filing the present petition, under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C.'), the applicant has assailed the order dated 20.10.2012, passed by the Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri, dismissing the complaint and acquitting the accused therein of the charge framed against them under Section 138 of Negotiable Instruments Act (for short 'the Act').

Learned counsel for the applicant contends that learned trial Court without appreciating the fact that the respondent No.2 had issued a cheque of Rs. 32 lacs to discharge his liability which was dishonoured. The respondent had closed his account, vide

application dated 19.04.2006 but the trial Court erred in not taking into consideration this aspect of the matter. The applicant had given the above said amount as a friendly loan to the respondent No.2, however, he failed to repay the same.

Heard.

The learned Judicial Magistrate has recorded that a lot of doubt exists in the mind of the Court regarding existence of actual transaction between the parties and regarding the genuineness of the claims of the applicant, since the applicant has taken up altogether different stands in his cross examination from the stand taken by him in his complaint and examination in chief.

Even, otherwise, there is nothing on record to show that the applicant had advanced the amount in question to the respondent from his bank account or from any other source. Neither any receipt nor any authenticated document has been placed on record to substantiate his claim. In the absence of any document that the applicant had the alleged amount with him, it is highly improbable that he advanced an amount of Rs.32 lacs to the effect to the respondent without any receipt or pronote. There is no document on record to show the liability of the respondent towards the applicant.

In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning

assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in C. Antony Vs. 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.

Accordingly, the leave to appeal stands declined.

Dismissed.

17.08.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter : Yes / No