

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

Criminal Misc. No.A-209-MA of 2013

Date of Decision:- 9.1.2015

Varun Sharma

....Petitioner

Versus

Sunder Raghav

...Respondent

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.Navneet Singh, Advocate for the petitioner.

Mehinder Singh Sullar, J. (Oral)

The epitome of the facts & evidence unfolded during the course of trial, culminating in the commencement, relevant for deciding the instant petition for leave to appeal and emanating from the record, is that initially, petitioner-complainant Varun Sharma s/o Mahesh Dutt Sharma (for brevity “the complainant”) has instituted the private criminal complaint, in which, respondent Sunder Raghav s/o Sampuran Singh was summoned to face the trial for the commission of an offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the NI Act”) by the trial Court.

2. After completion of the trial, the statement of the respondent was recorded. The entire incriminating material/evidence was put to enable him to explain any circumstance appearing against him produced on the record, as contemplated u/s 313 Cr.PC. He has stoutly denied the entire evidence of complainant in its totality, termed the pointed complaint as false and produced defence evidence in this regard. After considering the entire

oral as well as documentary evidence brought on record by the parties, the trial Court dismissed the complaint and acquitted the respondent from the indicated offence, by virtue of impugned judgment of acquittal dated 31.1.2013.

3. Aggrieved thereby, the petitioner-complainant has preferred the present petition for leave to appeal to challenge the impugned judgment of acquittal, invoking the provisions of section 378(4) Cr.PC. That is how I am seized of the matter.

4. After hearing the learned counsel for the petitioner, going through the evidence on record with his valuable assistance and considering the entire matter deeply, to my mind, there is no merit in the instant petition in this context.

5. At the very outset, it may be added here that the jurisdiction of the appellate Court in case of acquittal, was determined by the Hon'ble Apex Court in a celebrated judgment of Ghurey Lal v. State of U.P. **2008 (10) SCC 450**. Having considering the scope of sections 378, 386 Cr.PC and a line of various judgments on the point, it was ruled as under (Para 75):-

“75. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;*
- ii) The trial court's decision was based on an erroneous view of law;*
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*

- iv) *The entire approach of the trial court in dealing with the evidence was patently illegal;*
 - v) *The trial court's judgment was manifestly unjust and unreasonable;*
 - vi) *The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.*
 - vii) *This list is intended to be illustrative, not exhaustive.*
2. *The Appellate Court must always give proper weight and consideration to the findings of the trial court.*
 3. *If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."*

6. As is evident from the record that having completed all the codal/statutory procedure of the trial and considering the entire oral as well as documentary evidence brought on record, the trial Court dismissed the complaint of complainant and acquitted the respondent from the pointed offence, by way of impugned judgment of acquittal dated 31.1.2013, which, in substance, is as under:-

"After a collective reading of documents tendered by accused, statement of DW1 and keeping in view above discussion it seems that there was an agreement regarding business between complainant and accused in lieu of which they exchanged two blank signed cheques and the complainant for misusing the same gave one cheque to his friend Amit and both of them has presented the cheque in question for encashment in the bank and later on filed the complaints.

After going through above discussion, it can be concluded that complainant has not produced any evidence except the cheque in question to prove that he has given any loan to accused. On the other hand, accused has produced voluminous evidence to prove his defence. The complainant has failed to falsify the defence evidence in his favour. On the other hand, accused has successfully raised probable defence in his favour. As law laid down in Ragappa Vs. Mohan 2010(3) RCR (Criminal) 164, Hon'ble Supreme Court held that if accused is able to raise a probable defence which creates doubt about existence of a legally enforceable debt or liability, the prosecution can fall. Thus, the accused has successfully rebutted the presumption which was raised u/s 139 of NI Act and proved his probable defence that there was some business venture between complainant and accused in lieu of which they exchanged their blank signed cheques and complainant for misusing those cheques filled the same and presented if for

encashment and filed this complaint against accused.”

7. Meaning thereby, the trial Court has examined the matter in the right perspective and recorded the cogent grounds in this respect. The learned counsel for complainant did not point out any material, much less cogent, so as to warrant any interference in the present matter. Such articulated impugned judgment of acquittal, containing valid reasons, cannot possibly be interfered with by this Court, in exercise of limited jurisdiction u/s 378(4) Cr.PC, unless and until, the same is illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for complainant, so, the impugned judgment of acquittal deserves to be and is hereby maintained in the obtaining circumstances of the case.

8. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

9. In the light of aforesaid reasons, as there is no merit, therefore, the instant petition for leave to appeal is hereby dismissed as such.

9.1.2015
AS

(Mehinder Singh Sullar)
Judge