

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. A-571-MA of 2013
Date of Decision: 10.2.2015.**

Madan Lal

.....Applicant

Versus

M/s Raj Trading Company and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. P.K.Gupta, Advocate
for the applicant.

SABINA, J.

Respondents had faced trial in a complaint filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 qua dishonour of cheque dated 17.7.2006 in the sum of ₹ 1,80,000/-. Trial Court vide order dated 6.5.2011 ordered the acquittal of the respondents. 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 respondents has noticed that applicant in his cross-examination had admitted that his pay was ₹ 30,000/- per month as he was

working as a Teacher in a government school. It was further the case of the applicant that he was also getting lease money from the agricultural land owned by him. Applicant further stated that he had withdrawn ₹ 1,00,000/- from his account at the time of advancement of loan whereas the remaining amount was lying at home. Applicant admitted that the body of the cheque had been written in different ink and the firm of the respondents had been closed in the year 2001-2002.

Case of the respondents was that the cheque in question had been misused by the complainant as it had been signed by respondent No. 2 and at that time, the cheque was blank.

In order to prove his case, applicant had placed reliance on Ex. C-10 which was proved on record by CW-2 Ved Parkash. As per Ex. C-10, amount of ₹ 1,00,000/- had been deposited on 1.7.2007 by the applicant and had been withdrawn on the same day. Applicant wanted to establish that he had withdrawn ₹ 1,00,000/- from the bank to advance loan to the respondents. However, the cheque in question was issued on 17.7.2006 much before the amount of ₹ 1,00,000/- was allegedly withdrawn by the applicant for advancement of loan to the respondents. Thus, the applicant had not come to the Court with clean hands. Since the firm had been closed in the year 2001-2002, there was no occasion for issuance of cheque in favour of the applicant by the respondents in the year 2006. Hence, the reasons given by the Trial Court while ordering the acquittal of the respondents are sound reasons.

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 10, 2015
Gurpreet**