

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

CRM-A-634-MA of 2013 (O&M)

Date of decision: 24.08.2015

Janak Raj

...Applicant

Versus

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Karan Singh, Advocate for the applicant.

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**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 judgment dated 11.04.2013, passed by the Judicial Magistrate 1<sup>st</sup> 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').

It is contended that the learned trial Court dismissed the complaint without appreciating the fact that the cheque bearing No. 042496 dated 15.05.2008 of Rs. 3,86,000/- issued by the respondent towards discharge of his liability, stood dishonoured with the remarks 'account closed'. The respondent did not reply to the legal notice served upon him by the applicant. The respondent has not denied his signature

on the cheque but the trial Court erred in not taking into consideration this aspect of the matter.

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 claim 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. The applicant had stated that he had given the said amount to the respondent on 15.08.2000, however, in cross examination, he stated that he had given the amount to the respondent on 10.08.2000. The applicant had duly admitted in his cross examination that the signatures on the cheque were with ink pen and remaining particulars have been filled up by ball pen.

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.3,86,000/- to the respondent without any receipt or pronote. There is no document on record to show the legal liability of the respondent towards the applicant. Moreover, as per Ex.DW1/A, the

date, name and amount filled on the cheque does not tally with the specimen writing of the respondent. Otherwise also, as per the applicant, he had given the said amount as loan in the year 2000, however, the cheque in question pertains to the year 2008, therefore, the allegations of the applicant appears to be vague and barred by time.

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.

24.08.2015

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(JITENDRA CHAUHAN)  
JUDGE