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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-805-MA of 2013
Date of decision: February 04, 2015

Anil Kumar Jain

.....Applicant

Versus

Om Parkash Gupta and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rajiv Kataria, Advocate
for the applicant.

SABINA, J

Respondents had faced trial in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 of Indian Penal Code, 1860 ('IPC' for short) qua dishonour of cheque dated 30.11.2004 in the sum of ₹5,00,000/-. Trial Court while ordering the acquittal of the respondents has held as under:-

> *"17. Learned counsel for the accused has raised a plea that complainant is a financier. Accused No.1 took some money from him and gave a blank cheque as security in lieu of money borrowed by him. On the other hand, it is a case of complainant that an agreement to sell was executed between him and accused No.1 on 16.09.2014, which was cancelled later on and that cheque in question was issued in lieu of earnest money and penalty. But neither that agreement to sell nor its cancellation is on file. Complainant has deposed in his cross examination that the alleged agreement to*

sell was destroyed in the year 2004 at the time of issuance of cheque, but that cannot be believed as a person will not destroy a document in his favour unless he will receive his payment. Moreover, first cheque was issued in the year 2004 and the second cheque was issued in the year 2007. Complainant never presented the first cheque in the bank. Neither he filed any suit for recovery nor specific performance of agreement to sell till 2007. He has failed to explain why he kept silent for three years.

18. Though there is a noting on the backside of cheque Ex.C1 that it has been issued in lieu of Cheque No.313831 dated 30.11.2004 payable in Punjab National Bank, Sector-8, Panchkula on account of cancellation of agreement to sell dated 16.09.2004, but it is not proved that who had made this noting. Further, it is also not proved that who is the account holder of the account of which cheque in question was issued. There is no evidence on file to the effect that whether it is account of accused No.1 or accused No.2 or a joint account of both accused persons. Moreover, earlier cheque No.313831 dated 30.11.2004 'Mark 1' bears signature of accused No.1 only. It shows that accused No.2 has no concern with the present dispute.

19. Complainant has failed to prove that cheque in question was issued by accused persons in discharge of legal and valid liability. He has failed to establish the payment of money as alleged by him. No witness in whose presence alleged agreement to sell was executed has been examined. Further, as per complainant's own version, agreement to sell was only with accused No.1, but he has implicated his wife as accused No.2 also. It is admitted fact that wife of accused No.1 had also got registered an FIR *against complainant. There is every possibility that accused has filed the present complaint only as a counter blast to that FIR. Moreover, he is habitual of filing such like cases. His 10-12 cases for dishonour of cheques are already pending. In these circumstances, defence taken by accused that he had given a blank cheque as a security is more probable."*

The reasons given by the trial Court while ordering the acquittal of the respondents are sound reasons.

Case of the applicant was that the cheque in question had been issued qua payment made by the applicant to the accused in pursuance to the agreement to sell executed between the parties and applicant had paid the earnest money to the respondent No.1. However, the said agreement to sell was later cancelled and respondents had issued the cheque in question qua the earnest money paid by the applicant to respondent No.1. The said lea of the complainant was not established on record as applicant had failed to establish that the agreement to sell executed between the parties had in fact, been cancelled. Noting on the back-side of the cheque in question that the payment was being made on account of cancellation of agreement to sell, was not proved to have been made by the respondents.

Hence, the reasons given by the trial Court while ordering he acquittal of the respondents are sound reasons and call for no interference.

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"

Hence, no ground is made out to grant leave to file an appeal. Accordingly, this application is dismissed.

(SABINA)
JUDGE

February 04, 2015
m.singh