

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

CRM-A-835-MA of 2013 (O&M)
Date of decision: 18.08.2015

Karan Anand

...Applicant

Versus

Kamal Bakshi

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Karan Bhardwaj, Advocate,
for the applicant/appellant.

Jitendra Chauhan, J. (Oral)

By filing the present petition, under Section 378(4) of the Code of Criminal Procedure (for short 'the Cr.P.C.'), the applicant has assailed the order dated 27.07.2013, passed by the Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri, dismissing the complaint and acquitting the accused of the charge framed against them under Section 138 of Negotiable Instruments Act (for short 'the Act').

It is contended that in discharge of his legally enforceable liability, the accused-respondent issued cheque No.374233 dated 20.03.2009, amounting to Rs.50,000/-, which was dishonoured with the remarks 'payment stopped by the drawer'. This fact was brought to the knowledge of the accused whereupon, the

petitioner was asked to present the cheque again in the month of August, 2009. On 21.08.2009, the cheque in question was again presented which was dishonoured on 22.08.2009 with the remarks, 'payment has been stopped by the drawer'. A legal notice dated 02.09.2009 was issued to the accused to which he never replied. It is further submitted that despite the fact that the learned trial Court returned a categorical finding to the effect that the cheque in question was issued and signed by the accused, the complaint has been dismissed. He cites ***Rangappa Vs. Mohan, 2010 AIR (SC) 1898.***

Heard.

In the present case, there is no conclusive proof of actual payment of Rs.50,000/- by the petitioner-complainant to the accused/respondent. The petitioner has failed to show that at any point of time, he was having this amount in his account. Even the date on which the alleged transaction took place has not come either in the complainant or in the statement of the petitioner. The purpose of advancing alleged friendly loan has also not come forth. The stand of the petitioner that he had advanced the loan to the accused by taking the money from his father is also without any foundation in the absence of examination of his father as a witness. The impugned judgment passed by the learned trial Court is detailed and reasoned judgment and no fault can be found therewith. The case law cited by the learned counsel is distinguishable on facts.

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.

18.08.2015
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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter : Yes / No