

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

**CRM-A-836-MA of 2013
Date of Decision: 31.7.2015**

The Hisar Postal DI Sumit Co-operative Urban (NATC) Society Limited
through its employee Sh. Daya Nand

.....Petitioner

Vs.

Mahaveer

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Anurag Jain, Advocate
for the applicant.

Mr. Ashok Arora, Advocate
for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Present application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking leave to appeal, is directed against the judgment of acquittal dated 7.8.2013 passed by the learned Judicial Magistrate 1st Class, Hisar, whereby complaint, filed under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short), filed by the applicant-complainant, was dismissed

Brief facts of the case, as noticed by the learned trial court

in para 2 of the impugned judgment, are that Sh. Daya Nand, an employee claimed that he was entitled and authorized to pursue the complaint on behalf of the above named Society, duly registered in the eyes of law. The complainant-society was in a business of advancing loans and in due course of business, the accused-respondent had also been advanced loan on interest, but he failed to repay the same on agreed terms. Ultimately, a cheque bearing No. 443817 dated 8.7.2004 for a sum of ₹91,780/- drawn on Syndicate Bank, Hisar, was issued to discharge the outstanding liability in favour of the complainant-Society, but, on its presentation to Union Bank of India, Hisar, the same got dishonoured by the Banker of the Drawer-accused vide return memo dated 8.7.2004 with the remarks 'Insufficient Funds'. Consequently, a legal notice dated 19.7.2004 was issued to him but he again failed to honour the cheque within fifteen days from its receipt.

Initially, the complaint was decided on 30.9.2010. However, the learned Additional Sessions Judge, Hisar, directed to hold a de novo trial, complying with the directions issued by the Hon'ble Supreme Court in **Nitinbhai Sevatilal Shah and another Vs. Manubhai Majibhai Panchal 2011 (4) RCR (criminal) 148 (SC)**. Upon notice, accused respondent appeared before the court and pleaded not guilty and claimed trial.

In order to prove its case, complainant-applicant examined himself as CW1, besides producing on record other relevant documentary evidence. After closing of the evidence of the complainant, statement of the accused was recorded under Section

313 Cr.P.C. All the incriminating material brought on record was put to the accused. He denied all the allegations, pleaded false implication and claimed complete innocence.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the complainant has failed to prove his case. Accordingly, the complaint was dismissed and the accused-respondent was acquitted of the charges framed against him, vide impugned judgment dated 7.8.2013.

Learned counsel for the applicant submits that learned trial court has misdirected itself, while not appreciating the oral as well as documentary evidence, in the right perspective. He further submits that the complainant has brought on record cogent and convincing evidence, which was sufficient to bring home the guilt against the accused-respondents. In support of his contentions, learned counsel for the applicant places reliance on a judgment of Madras High Court in A.R.M. Nizmathuallah Vs. Vaduganathan 2008 (1) RCR (criminal) 181. He prays for setting aside the impugned judgment, by allowing the present application.

On the other hand, learned counsel for the respondent submits that since the learned trial court proceeded on a factually correct and legally justified approach, while passing the impugned judgment, the same deserves to be upheld. He further submits that learned trial court considered each and every relevant aspect of the matter, before passing the judgment of acquittal. To buttress his arguments, learned counsel for the applicant places reliance on a

judgment of this Court in Manjit Kaur Vs. Vanita, 2010 (3) RCR (criminal) 574. He prays for dismissal of the present application.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that present one is not a fit case, warranting interference at the hands of this Court. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned judgment of acquittal would show that learned trial court has considered each and every relevant aspect of the matter, in the correct perspective, before arriving at a judicious conclusion that the applicant-complainant failed to prove his case. The evidence led by the complainant-petitioner was rightly not found sufficient to record the conviction. The impugned judgment has not been found to be suffering from any patent illegality or error of law and the same deserves to be upheld.

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in ***Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638***. The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of ***Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140***, ***Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657***

and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015). The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's case** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of

acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court. Xxx xxx xxx

xxx xxx

33. *We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.”*

(Emphasis Supplied)

11. *The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:*

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing

to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which

favours the accused/appellant has to be Page 16

16 considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge."

During the course of arguments, learned counsel for the applicant could not point out any jurisdictional error or patent illegality in the judgment rendered by the learned trial court, so as to convince this Court to take a different view than the one taken by the learned trial court. In such a situation, no interference is warranted at the

hands of this Court and the impugned judgment deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present application is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, present application stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

31.7.2015
Ak Sharma