IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-901-MA of 2013 (O&M)
Date of decision: 27.08.2015

Ritesh Chopra

...Applicant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Navdeep Monga, Advocate for the applicant.

Mr. Mehardeep Singh, DAG, Punjab.

Mr. V.S. Rana, Advocate for respondent No.2.

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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 order dated 14.02.2013, passed by the Judicial Magistrate 1st Class, Patiala, dismissing the complaint and acquitting the accused of the charge framed against him under Section 138 of Negotiable Instruments Act (for short 'the Act') and the order dated 04.06.2013, passed by the learned Additional Sessions Judge (Fast Track Court), Patiala, whereby the appeal filed by the applicant had been dismissed.

Learned counsel for the applicant contends that learned both the Courts below without appreciating the material facts on record have passed the impugned orders which is contrary to law. The learned Court of JMIC has not taken into consideration the fact that the respondent No.2 had issued a cheque bearing No. 016341 dated 15.09.2008 amounting to Rs. 60,000/- to discharge his liability which was dishonoured with the remarks 'account closed'. The applicant and respondent No.2 were known to each other and the applicant gve friendly loan of Rs. 78,000/- to respondent No.2. Out of total Rs. 78,000/-, Rs. 18000/- was given in cash whereas Rs. 60,000/- was given through cheque which the respondent No.2 failed to repay. The learned counsel further submits that the respondent No.2 had duly admitted the fact of borrowing Rs.60,000/- and the cheque from the applicant, vide Annexure A-1. The Court of learned JMIC has also not taken into consideration the documents Ex.C1 to C9 which would establish the liability of respondent No.2 towards the applicant.

On the other hand, the learned counsel for the respondent vehemently argued that the trial Court has rightly dismissed the complaint of the applicant. In fact the applicant being a Financer had advanced the loan to him in the year 2002, which stands repaid in installments. At the time of raising the said loan, the applicant had taken five cheques from the respondent No.2 and the same have not been returned even after repayment of loan amount and the applicant has misused one of the cheque. The respondent No.2 had also moved a complaint on 12.09.2008 to the police in this regard. This clearly shows the mala fide intention of the applicant towards respondent No.2.

This Court has heard the rival contentions of the parties and carefully gone through the impugned judgment.

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 claims of the applicant, since the applicant has failed to bring on record the proof regarding the amount or sum advanced by him.

The transaction pertains to the year 2002, however the cheque in question is dated 15.09.2008. The applicant in his cross examination has duly admitted that he had given payment of Rs.78,000/- to the accused/respondent No.2 in the year 2002 and accused issued cheque in his favour in September 2008. It is highly improbable that the cause of action arose in the year 2002, however the cheque in question was issued after a lapse six years. Admittedly, some transaction had taken place between the parties, however, there is nothing on record to show as to how much amount was borrowed or given to the respondent No.2. The respondent No.2 has admitted that he took a loan of Rs.60,000/- from the applicant in the year 2002 and five cheques were issued in lieu of the loan, however, the same were not returned after the debt had been cleared. A complaint was also made to the SHO, PS Tripuri in this regard on 12.09.2008. The cheque in question is alleged to be of 15.09.2008. Once the respondent No.2 himself moved a complaint against the applicant then the story of issuance of cheque on 15.09.2008 is not sustainable. There is no document on record to show the liability of respondent No.2 towards the applicant. Neither any receipt nor any authenticated document has been placed on record to substantiate the claim of the applicant.

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.

27.08.2015 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**