IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1045-MA of 2015 (O&M)
Date of decision: 21.12.2015

Anil Kumar Sagar

...Applicant

Versus

Muskan Enterprises and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashish Yadav, Advocate for
Mr. Varun Katyal, 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 01.10.2014, passed by the Judicial Magistrate 1st Class, Chandigarh, whereby the accused (respondent herein) was acquitted.

It is contended that the the respondent/accused took a friendly loan of Rs. 75,000/- from the applicant on 20.05.2012 with a promise to repay the same within a period of two months and to discharge his liability, he issued cheque bearing No. 472139 dated 25.06.2012 for a sum of Rs. 75,000/- in favour of the applicant. However, on presentation, the cheque was dishonoured with remarks 'funds insufficient'. The applicant had sent legal notice to the respondent but he failed to repay the loan amount. The respondent never even disputed the fact of issuance of cheque and signature on the same and yet the learned trial Court dismissed the complaint without appreciating the said facts.

Heard.

The applicant had alleged that the respondent took Rs. 75,000/- as friendly loan and he failed to repay the same. The applicant while appearing as CW-1 in his cross examination had admitted that the respondent used to purchase gift items from his shop and he knew the respondent out of those business dealings only. He further deposed that respondent purchased material from him till the year 2011 against proper bills and the payment was made through cash and cheques. He further stated that respondent had no business dealing with him in the year 2012 and no document was prepared at the time of advancing loan to the respondent. He further admits that he maintained account books but he had not reflected the loan amount in the same. Once the applicant himself admits that he had no business dealing with the respondent in the year 2012, then it is highly improbable that he advanced a friendly loan to the respondent in the year 2012 without any pronote or receipt, whereas he duly admits that he used to maintain an account book. As per the applicant, the loan amount was given in cash, however, he failed to show any document or source from where he arranged the same. No document has been brought on record to prove the existence of actual transaction between the parties and regarding the genuineness of 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.

21.12.2015 **(JITENDRA CHAUHAN)**
atulsethi/sumit.k **JUDGE**