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

CRM-A-1020-MA of 2014

Date of decision: February 20, 2015

M/s J.D. Enterprises

.....Applicant

Versus

Sh. Suresh Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sardavinder Goyal, Advocate
for the applicant.

SABINA, J

Respondent had faced trial in a complaint filed by the applicant under Section 420 of Indian Penal Code, 1860 ('IPC' for short). Trial Court vide order dated 07.03.2014 ordered the acquittal of the respondent. Hence, the present application under Section 378(4) of Code of Criminal Procedure, 1973 for grant of leave to appeal by the complainant.

I have heard learned counsel for the applicant and have gone through the record available on the file carefully.

The case of the applicant in brief was that the respondent took loan to the tune of ₹25,500/- from the applicant firm on 10.08.2005. Pronote was executed in this regard on the same day by the respondent in favour of the firm. Thereafter, respondent issued cheque dated 20.12.2006 qua repayment of the loan. However, when the said cheque was presented for encashment, the same was returned with the remarks "account closed". Respondent had failed to make the

repayment of the loan amount. Applicant had earlier filed a complaint against the respondent under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) qua dishonour of cheque, but the same was withdrawn and thereafter, the complaint in question was filed against the respondent.

Learned trial Court while ordering the acquittal of the respondent held that initially complaint under Section 138 of the Act was withdrawn by the applicant. Reliance was placed by the applicant on pronote Exhibit P-4, which had been executed by the respondent in favour of the applicant. Execution of the pronote was denied by the respondent. However, applicant had failed to prove the due execution of the pronote. Even the applicant had failed to establish that the cheque Exhibit P-6 had been signed by the respondent. The plea of the applicant was that the cheque Exhibit P-6 had been signed by the respondent in the presence of the applicant and Dinesh Kumar. However, Dinesh Kumar was not examined during trial nor any handwriting expert was examined to establish that the pronote Exhibit P-4 and cheque Exhibit P-6 had been signed by the respondent. During the course of arguments, it has also transpired that the applicant has not filed any suit for recovery on the basis of pronote Exhibit P-4.

The reasons given by the trial Court while ordering the acquittal of the respondents of the charge framed against them, 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 20, 2015
m.singh