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

CRM-A-1022-MA of 2014

Date of decision: February 20, 2015

Jaswant Singh

.....Applicant

Versus

Gurlabh Rai Batra

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Surinder Garg, Advocate
for the applicant.

SABINA, J

Respondent had faced trial in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) qua dishonour of cheque dated 28.02.2011 in the sum of ₹5,42,000/-. Trial Court vide order dated 14.05.2014 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 applicant.

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

Case of the complainant in brief was that he was allotted English and Country made Liquor vend alongwith the respondent. Harvinder Singh had also joined the complainant and the respondent as a partner vide agreement dated 27.04.2009. Respondent has received ₹40,00,000/- from the applicant and Harvinder Singh. Profit and loss were to be divided between the complainant and Harvinder Singh to the extent of 20% each. Respondent had issued cheque in the sum of ₹5,42,000/- in favour of the complainant towards his share of profit. However, when the

said cheque was presented for encashment, the same was returned by the Bank with the remarks "insufficient balance".

Applicant led his evidence in support of his case. Respondent when examined under Section 313 Cr. P.C. after the close of prosecution evidence, pleaded that infact, there was dispute qua accounts between him and the applicant. Applicant had moved an application before the Deputy Superintendent of Police (DSP), Gidderbaha. Respondent was called by the DSP and in the Police Station, he was pressured to hand over the blank signed cheque to the applicant. Respondent appeared in the witness box as DW3 and deposed to the similar effect.

Respondent also examined DW1-Inspector Davinder Singh, who stated that respondent was called to the Police Station. DW2-Rakesh Kumar also deposed that he had gone with the respondent and Vikas Sharma to the office of DSP as he was having a dispute with Jaswant Singh regarding accounts of liquor vend. He corroborated the version of the respondent that respondent had been made to sign a blank cheque under police pressure.

Trial Court while ordering the acquittal of the respondent held that the case of the applicant was that the cheque had been issued to the respondent in his favour towards his share of profit. However, applicant had failed to prove the accounts maintained by them to establish that infact, he had earned profit to the tune of ₹5,42,000/- as alleged by him. During the course of arguments, it has also transpired that the civil litigation is pending between the parties qua recovery/settlement of accounts.

In the facts and circumstances of the present case, the learned trial Court rightly ordered the acquittal of the respondents as the plea putforth by the respondent appear to be probable.

The reasons given by the trial Court while ordering the acquittal of the respondent 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