213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1095-MA of 2014
Date of decision: February 05, 2015

Madan Lal Mahajan

.....Applicant

Versus

M/s Shiroga International Pvt. Ltd. and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rishu Mahajan, Advocate
for the applicant.

SABINA, J

Respondents had faced trial in a compliant filed by the applicant under Sections 138 of the Negotiable Instruments Act, 1881 ('Act' for short) qua dishonour of cheques in the sum of ₹5,00,000/- and ₹1,00,000/- dated 11.11.2004. Trial Court vide order dated 05.11.2011 ordered the acquittal of the respondents of the charges framed against them. Hence, the present application under Section 378(4) of Code of Criminal Procedure, 1973 for grant of leave to appeal.

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

Learned trial Court while ordering the acquittal of the respondents has held that admittedly, applicant was working as an Accountant in the company-respondent No.1. Applicant was drawing salary to the tune of ₹7,500/- per month during the period of his employment. Applicant had admitted in his cross-examination that he used to handle and fill the cheques signed by the accused during the course of day to day business of the accused company. Applicant, who was earning only ₹7,500/- per month had failed to establish by proving on record his bank account that he was having the capacity to advance ₹6,00,000/- as loan to the respondents. In fact, as per the case of the applicant, he had advanced in all loan to the tune of ₹13,04,050/- to the accused-respondent No.1. Applicant had pleaded that the loan had been advanced by him from the account of M/s M.P. Enterprises, which was being managed by his wife. Record of M/s M.P. Enterprises was not proved on record in accordance with law. Further, it has been noticed by the trial Court that the statements though not proved on record in accordance with law, did not show any entry of withdrawal of the amount in question. Moreover, the Income Tax Returns of the applicant proved on record by the accused, also did not reveal that the transactions in question, had been mentioned therein.

Thus, in the facts of the present case, learned trial Court rightly came to the conclusion that the applicant, who was working as an accountant with the respondents, had misused the blank cheques signed by the accused. Learned counsel for the applicant has failed to point out any misreading of evidence by the trial Court, which would warrant interference by this Court.

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 05, 2015
m.singh