

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

CRM-A-1204-MA of 2014 (O&M)

Date of decision: 26.11.2015

Bhupinder Kumar

...Applicant

Versus

Balwinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Y.S. Turka, Advocate for the applicant.

Mr. Kanwaljit Singh, Advocate for the respondent.

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 24.12.2013, passed by the Judicial Magistrate 1st Class, Dera Bassi, dismissing the complaint and acquitting the accused therein of the charges framed against him under Section 138 of Negotiable Instruments Act (for short 'the Act').

It is contended that the learned trial Court dismissed the complaint without appreciating the sufficient material on record. The father of the applicant had sold piece of land for Rs. 10 lacs. Out of sale proceed, Rs.5 lacs was given to the applicant whereas another Rs.5 lacs was given to his brother Pushpinder Kumar. The learned trial

Court has failed to appreciate the fact that the respondent/accused had duly admitted that the cheque bearing No. 091481 dated 08.05.2010 of Rs. 5 lacs was issued by him towards discharge of his liability which was dishonoured with the remarks 'funds insufficient'. Thereafter, the applicant had served a registered notice upon the respondent/accused on 13.05.2010, however, the respondent did not make the payment deliberately but the trial Court erred in not taking into consideration the above facts.

On the other hand, the learned counsel for the respondent submits that the trial Court has rightly dismissed the complaint of the applicant. The respondent had never took any loan from the applicant, therefore, the present petition deserves to be dismissed.

Heard.

A perusal of the record would reveal that there is no averment with regard to selling of land by the father of the applicant. The applicant in his cross examination alleged that he had borrowed Rs. 2 lacs from his brother, who has not been examined. Otherwise also, the assertion of the applicant that he being the owner of 10 acrs of land had been earning Rs. 1 to 2 lacs per month does not appear to be reasoned. The applicant has taken up altogether different stands in his cross examination from the stand taken by him in his complaint and examination in chief. The brother of the applicant is the best witness to prove his complaint, however, neither the brother was produced as a

witness to prove the complaint nor any receipt or statement of account was produced before the trial Court.

Even, otherwise, there is nothing on record to show that the applicant had advanced the amount in question to the respondent. Neither any receipt nor any authenticated document has been placed on record to substantiate his claim. There is no document on record to show the legal liability of the respondent towards the applicant. The allegations of the applicant appears to be vague.

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.

26.11.2015

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(JITENDRA CHAUHAN)
JUDGE