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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-166-MA-2014
Date of decision: 21.05.2015

Manpreet Singh

.... Applicant/Appellant(s)

Versus

Sarabjeet Singh and another

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. P.K.S.Phoolka, Advocate,
for the applicant.

PARAMJEET SINGH, J. (ORAL)

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 11.12.2013 passed by the Judicial Magistrate Ist Class, Bathinda whereby complaint filed by applicant under Section 138 of the Negotiable Instruments Act (in short, 'the Act') has been dismissed and respondent has been acquitted of the notice of accusation served upon him.

Brief facts of the case are that a complaint was filed by the

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applicant-complainant under Section 138 of the Act alleging that respondent-accused took a cash loan of ₹4,00,000/- from the complainant for his domestic needs on the basis of pronote in presence of marginal witnesses and in discharge of his legal liability, the respondent issued a cheque No.233648 dated 28.06.2012 for a sum of ₹4,00,000/- in favour of the complainant out of his account No.S 13592 maintained by the respondent with the drawee bank and assured the complainant that the above said cheque will be honoured as and when the same will be presented for its encashment. On presentation of cheque, the applicant further sent the same for clearance to the banker of accused, but the same was returned with remarks "Funds Insufficient" vide memo dated 29.06.2012. Upon receipt of cheque with memo through his banker, the applicant served a registered legal notice dated 06.07.2013 through registered post upon the accused calling upon to make the payment within 15 days which was duly received by the respondent. The respondent instead of making the payment sent reply to the notice on 11.07.2012 through his counsel and denied for making the payment of the cheque amount. Despite notice, the respondent failed to make the payment of above said dishonoured cheque to the complainant within the stipulated period of 15 days. Therefore, the complaint was filed.

On the basis of preliminary evidence, notice of accusation for commission of an offence punishable under Section 138 of the Act was served upon the accused-respondent to which he pleaded 'not guilty' and

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claimed trial.

The complainant, in order to prove his case, examined himself as CW1. Thereafter, statement of the respondent-accused under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication. In his defence, the respondent examined Surinder Kumar Goyal, Branch Manager, SBOI, Nehianwala as DW 1 and also examined the same witness as DW 2.

The trial Court, after appreciating the evidence, acquitted the respondent of the notice of accusation, served against him, vide impugned judgment dated 11.12.2013. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

“15. The case of the complainant is that he advanced Rs.4,00,000/- to the accused on the basis of pronote dated 28.03.2012 and he produced one copy of pronote Ex.C6. First of all, complainant never examined any marginal witness of the alleged pronote who appeared in court and stated on oath that in his presence the amount was advanced to the accused. Secondly, if we go through the notice issued by the complainant to the accused Ex.C3 and in that notice, no date of advancement of loan is mentioned and nothing is mentioned regarding execution of pronote dated

28.03.2012. However, complainant in his complaint stated that money was advanced on 28.03.2012 and pronote was executed on the same date and thereafter on demand, accused issued cheque and this fact cause shadow upon the advancement of loan amount. Thirdly, the accused gave his reply to the notice and clearly stated that he has never taken any loan from the complainant and he never visited the shop of complainant and only blank cheques were got signed by the complainant from the accused, which was misused even after that the complaint was filed against the accused. Fourthly, the complainant placed on record the account statement Ex.C7, but the same is pertaining to loan amount which was advanced for dairy purpose to the complainant and his wife and the same advanced money is presumed to be spent on installation of dairy farm and a person who himself taken loan from bank cannot further advance the amount to any person through pronote or any other document. Rather complainant himself failed to produce any account statement of his firm and income tax return. However, in his cross-examination he admitted that he is running a commission agent shop at Goniana Mandi and a person who is a commission agent is liable to submit all detail in his income-tax and advancement of any loan to any person. The contention of learned counsel for complainant that personal loan is not liable to be reflected in income-tax and account books is not tenable, because the advancement of loan is regarding huge amount and that must be shown in the income-tax and account books. From the whole evidence and case law

submitted by both the counsel, it is duty established that no money was advanced on 28.03.2012 as no marginal witness of alleged pronote is produced in court who deposed his testimony on oath in court. As the complainant himself failed to prove the advancement of loan to the accused and the onus was upon him to prove that money was advanced to the accused. No account statement or other documents placed on record vide which the amount was accounted in the account of accused. It is not established that accused in discharge of his legal liability issued disputed cheque and he is liable to be acquitted. The case law submitted by the learned defence counsel are duly applicable to the present complaint. However, case law submitted by learned counsel for complainant are not applicable to the present case. As such, the complaint of the complainant has no merits and the same is hereby dismissed. Accused is acquitted and directed to furnish personal bail bonds in the sum of Rs.10,000/- with one surety in the like amount within the meaning of 437-A with an undertaking to appear before the appellate court in the event of filing of an appeal. File be consigned to the Record Room after completing it in all respects.”

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr.***

vs. State of Karnataka 2014(2) RCR (Criminal) 507 has held as under:

“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “the High Court should and will always give proper weight and

consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

*12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in **Tulsiram Kanu v. State; [AIR 1954 SC 1]**, **Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637]**, **Atley v. State of U.P.; [AIR 1955 SC 807]**, **Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217]**, **Balbir Singh v. State of Punjab; [AIR 1957 SC 216]**, **M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200]**, **Noor Khan v. State of Rajasthan; [AIR 1964 SC 286]**, **Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450]**, **Shivaji Sahabrao***

Bobade v. State of Maharashtra; [(1973) 2 SCC 793], Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424], Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R. (Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R.(Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R.(Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R. (Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals

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with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

As such, application for leave to appeal is dismissed on merit.

21.05.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE