

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

CRM-A-1893-MA of 2015 (O&M)

Date of decision: 21.12.2015

Rattan Singh

...Applicant

Versus

Sunil Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Mukesh Yadav, Advocate for the applicant.

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 judgment dated 13.10.2015, passed by the Judicial Magistrate 1st Class, Mohindergarh, whereby the accused (respondent herein) was acquitted.

It is contended that the learned trial Court dismissed the complaint without appreciating the fact that respondent had duly admitted the transaction between him and father of the applicant. The respondent had borrowed an amount of Rs. 2 lacs from the applicant and to discharge his liability, he issued cheque bearing No. 000026 dated 21.03.2013 of Rs. 2 lacs, which was dishonoured with remarks 'insufficient funds'. Thereafter, the applicant had served a legal

notice upon the respondent/accused, however, the same was received back un-served. He further contends that the trial Court has totally ignored the exhibits produced by the applicant and the fact that the respondent had duly admitted his signature on the cheque. The respondent did not make the payment deliberately but the trial Court erred in not taking into consideration the above facts.

Heard.

The learned Judicial Magistrate has recorded that a lot of doubt exists in the mind of the Court regarding existence of actual transaction between the parties and regarding the genuineness of the claim of the applicant, since the applicant has taken up an altogether different stand in his cross examination from the stand taken by him in his complaint and examination in chief. The applicant had alleged that respondent/accused borrowed an amount of Rs.2 lacs from him, however, in his cross examination he admits that no pronote or writing was effected while advancing the aforesaid amount. He further stated that he does not know the residence of respondent/accused. No source of payment has been proved on record. Neither any receipt nor any statement of account was produced before the trial Court to substantiate the allegations.

Even otherwise, there is nothing on record to show that the applicant had advanced the amount in question to the respondent.

There is no document on record to show the legal liability of the

respondent towards the applicant. The allegations of the applicant appear 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.

21.12.2015

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(JITENDRA CHAUHAN)
JUDGE