

215

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

CRM-A-1933-MA of 2014 (O&M)

Date of decision: February 27, 2015

State Bank of Patiala

.....Applicant

Versus

Smt. Sunita

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. D.K. Singal, 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 qua dishonour of cheque dated 15.12.2011 in the sum of ₹1,76,219.23P.

Case of complainant in brief was that respondent had approached the bank for availing Car loan and loan was advanced to the respondent to the tune of ₹2,39,000/-. After payment of some monthly installments, respondent failed to repay the remaining installments. Respondent issued the cheque in question to clear the loan amount. However, when the said cheque was presented for encashment, the same was dishonoured by the Bank with the remarks "Today's Opening Balance Insufficient".

Learned trial Court while ordering the acquittal of the respondent has placed reliance on No Objection Certificate (NOC) issued by the complainant in favour of the respondent.

As per Exhibit DB, the Bank had declared that the agreement of hire purchase/lease/hypothecation entered between Bank and the respondent stood terminated. It was further requested by the Bank that the note endorsed in the certificate of register of banker in question in the name of respondent qua the agreement be cancelled.

Since the Bank had issued NOC on 18.05.2011, the learned trial Court rightly came to the conclusion that there was no occasion for the respondent to issue the cheque in question in favour of the complainant in December, 2011.

The reasons given by the trial Court while ordering the acquittal of the respondent of the charge framed against him, 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 27, 2015

m.singh