

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH****CRM-A-555-MA-2015
Date of decision:28.5.2015**

M/s New Goyal Trading Company through its Proprietor
...Applicant

Versus

Ram Kumar
...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.J.S.Virk, Advocate for the applicant.**RAMESHWAR SINGH MALIK, J. (Oral)**

Instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeking leave to appeal, is directed against the judgment of acquittal dated 4.12.2014 passed by the learned Judicial Magistrate 1st Class, Karnal, whereby the complaint under Section 138/142 of the Negotiable Instruments Act, 1881 ('NI Act' for short), filed by the present applicant, was dismissed.

Brief facts of the case, as recorded by the learned trial Court in para 1 of its impugned judgment of acquittal, are that the applicant was working as a Commission Agent under the name and style of M/s New Goyal Trading Company. The accused-respondent was an agriculturist by profession and used to sell his agricultural produce since the year 1995. The accused-respondent used to borrow the money from the complainant-applicant for agricultural purposes. It was further pleaded by the applicant-complainant that the entire record of transaction between the complainant and accused was maintained in the account books prepared and maintained

in the ordinary course of business. On 28.2.2011, an amount of Rs.7.14,000/- was found outstanding against the accused. Respondent-accused finally settled his account with the complainant-applicant and at that time, a sum of Rs.7,05,000/- remained outstanding against the accused. Applicant-complainant further pleaded in his complaint that in discharge of his above-said financial liability, accused-respondent issued a cheque No.599101 dated 28.2.2011 for Rs.7,05,000/-, drawn at Andhra Bank, Karnal, in favour of the complainant. The complainant-applicant presented the said cheque twice for encashment with his banker but the same was returned unpaid with remarks "Insufficient funds & dormat account", vide memos dated 12.3.2011 and 31.3.2011. Applicant-complainant issued a legal notice dated 29.4.2011 but the accused neither replied the legal notice nor made the payment of the cheque amount. Having been left with no other option, the complainant-applicant filed a complaint under Section 138/142 of the NI Act.

Preliminary evidence having been led by the complainant, the accused-respondent was summoned to face trial for the offence under Section 138 of the NI Act. The accused-respondent appeared and he was admitted to bail. Thereafter, he was served with a notice of accusation under Section 138 of the NI Act, to which the accused pleaded not guilty and claimed trial.

With a view to prove its case, the complainant-applicant examined Saurabh Pandey, Assistant Manager, Andhra Bank, Karnal, as CW-1, J.N.Sharma, Special Assistant, UCO Bank, Karnal, as CW-2 and the complainant himself appeared as CW-3, besides producing the other relevant documentary evidence.

On conclusion of the evidence of the complainant, statement of the accused-respondent was recorded under Section 313 Cr.P.C. Entire incriminating material brought on record was put to the accused, who pleaded his false implication and claimed complete innocence. Having been called upon to lead his defence evidence, the accused-respondent examined Avinash Soni, Assistant Manager, Andhra Bank, Karnal, as DW-1, besides producing on record the other relevant documentary evidence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant-applicant has failed to discharge its initial onus. Accordingly, the complaint was dismissed vide impugned judgment of acquittal dated 4.12.2014. Hence this application under Section 374 (4) Cr.P.C., seeking leave to appeal.

Learned counsel for the applicant submits that the learned trial Court failed to appreciate the true factual as well as legal aspect of the matter, while passing the impugned judgment of acquittal. He further submits that the applicant-complainant has brought on record cogent evidence, which was sufficient to record conviction of the accused-respondent. Since the learned trial Court fell in serious error of law, while not appreciating the evidence available on record, in the correct perspective, the impugned judgment of acquittal has resulted in miscarriage of justice. He prays for allowing the instant application.

Having heard the learned counsel for the applicant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the case, noticed

hereinabove, present one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its appellate jurisdiction, for the following more than one reasons.

Admittedly, relevant books of account were not produced by the complainant for the reasons best known to it. From the books of account which were produced, case of the complainant could not be proved because the complainant failed to examine the concerned clerk or accountant who has prepared the books of account, for the reasons best known to the complainant. The account books and ledger books of the complainant-applicant were only the relevant documents, which could have proved its case. However, the complainant miserably failed to prove its case by producing the relevant account books and the concerned person, who used to prepare and maintain its account books.

Before arriving at a judicious conclusion, the learned trial Court recorded its cogent findings in paras 18 and 19 of the impugned judgment of acquittal and the same deserve to be noticed here, which read as under:-

“Otherwise also, the account books for the period 2008 to 2011 Mark A (prepared by Munim of complainant) in no way establishes the liability of the accused as these account books had not been proved to be prepared & maintained in ordinary course of business by the complainant by examining the concerned Munim for reasons best known to him. Even there was no document on record from where the court itself could ascertain as to how these account books were prepared and maintained in ordinary course of business, discussed above. Hence, it would not be inappropriate for the court to held that the complainant had solely relied upon the entries of the account books tendered by him for the period 2008 to 2011

to prove the liability of accused and the defence has been successful in elucidating sufficient material contradictions from the said accounts books to show that those entries were not authentic & correct. Even if for the sake of arguments, the court believes the entries in the books of account are correct & authentic, such books of account can not fix the liability upon the accused in the absence of independent evidence of trustworthiness. Reliance in this regard may be placed upon the law laid down by Hon'ble Supreme Court of India in case titled as CBI Vs V.C. Shukla 1999 CrLJ 1905 (SC) wherein it was held that even if the entries in the books of account are correct and authentic, such books of account can not fix the liability upon the person in the absence of independent evidence of trustworthiness. Coming to the present case, the entries of account books have not been proved to be authentic & correct and otherwise also there was no independent evidence of trustworthiness. The complainant has admitted the fact that he had shown all the amount due towards the accused during every single financial year, therefore, he was having a golden opportunity to lead independent evidence of trustworthiness by furnishing his relevant Income Tax Returns but for reasons best known to him, he did not do so.

All these facts & circumstances clubbed together do lead to a logical inference that the accused has been successful in elucidating sufficient material from the evidence of complainant to raise more than a reasonable doubt over the account books tendered by the complainant to establish the liability of accused. Consequently, the onus was shifted upon the complainant to prove the liability of accused beyond all shadows of reasonable doubt, but as discussed above, he failed to do so.

In view of the aforesaid discussion and findings, the court is of the view that the accused has successfully raised a probable defence against the presumption under Section 118 & 139 of the Negotiable Instrument Act and the same stands

rebutted. On the other hand, complainant has failed to prove his case that the accused has issued the cheque in question in discharge of his legally enforceable debt/liability. Accordingly, the accused is hereby acquitted and exonerated of the notice of accusation u/s 138 of Negotiable Instrument Act...”

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in **Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638**. The law laid down by the Hon'ble Supreme Court in the case of **Arulvelu** (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015)**.

The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's case** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

*31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see *Dhanna v. State of M.P.*, *Mahabir Singh v. State of Haryana* and *Shailendra Pratap v. State of U.P.*) which had not been adhered to by the High Court.*

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.” (Emphasis Supplied)

*11. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus:*

“Generally the order of acquittal shall not be

interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the

appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge."

During the course of arguments, learned counsel for the applicant could not point out any jurisdictional error or patent illegality in the impugned judgment of acquittal passed by the learned trial court, so as to convince this Court to take a different view than the one taken by the learned court below. In such a situation, no interference is warranted at the

hands of this Court and the impugned judgment deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present application is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, with the above-said observation made, the present application stands dismissed, however, with no order as to costs.

28.5.2015
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(RAMESHWAR SINGH MALIK)
JUDGE