

CRM-A-608-MA of 2015

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

CRM-A-608-MA of 2015 (O&M)

Date of decision: 29.06.2015

Nidhi Soni

....Applicant

Versus

Vinod Kumar and another

....Respondents

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. B.S. Randhawa, Advocate, for the applicant.

PARAMJEET SINGH, J.

CRM No.11270 of 2015

For the reasons mentioned in the Crl. Misc. application, same is allowed. Delay of 46 days in filing the application is condoned.

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The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 02.12.2014 passed by learned Judicial Magistrate Ist Class, Ambala whereby complaint filed by applicant under Section 138 of the Negotiable Instruments Act has been dismissed and respondent has been acquitted of the notice of accusation issued against him.

Brief facts of the case are that a complaint was filed by the applicant-complainant under Section 138 of the Negotiable Instruments Act, 1881 alleging that respondent-accused was in liability to pay a sum

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of ₹ 4,95,000/- to the applicant-complainant. The respondent-accused had given one cheque to applicant-complainant on 23.3.2013 amounting to ₹ 4,95,000/- bearing no. 004692 dated 23.3.2013 drawn at Indian Bank, Ambala Cantt for purchasing commercial vehicles and assured the applicant-complainant that the cheque will be honoured. The applicant-complainant presented the cheque in the bank for collection but the same was returned to the applicant-complainant in original with the memo dated 16.4.2013 of the bank with the remarks "Funds Insufficient". Thereafter, the applicant-complainant issued a legal notice dated 14.5.2013 through registered post but despite that the respondent-accused did not make the payment of the cheque in question within stipulated period, therefore, the complaint was filed.

The complainant led preliminary evidence and closed the same on 8.7.2012. On the basis of preliminary evidence, the trial Court after finding sufficient grounds vide order dated 8.7.2012 summoned the accused to face trial for the commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I.Act.).

On the basis of preliminary evidence, notice of accusation for commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 was served upon the accused-respondent to which he pleaded "not guilty" and claimed trial.

To prove the allegations, complainant herself appeared as CW1 and in her testimony tendered her affidavit Ex.CW1/A vide which she reiterated the contents as made in the complaint. She also tendered

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documents Ex. C1 cheque in question, Ex. C2 bank memo, Ex. C3 legal notice, Ex. C4 postal receipt, Ex. C5 affidavit of accused. Thereafter the applicant-complainant closed her evidence on 16.09.2014.

Thereafter, statement of the respondent-accused under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the respondent of the notice of accusation, served upon him, vide impugned judgment dated 02.12.2014. 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. In the present case, to rebut the presumption raised against the accused, the accused has taken the defence that his blank signed cheque alongwith B.P. Apparatus has been taken by the complainant from his clinic in his absence and the same has been misused . He has neither taken any alleged interest free loan of ₹ 4,95,000/- nor he has any liability. Therefore, point for determination before the court is whether the defence of the accused is probable or not or whether the cheque in question has been duly issued/ executed in discharge of legal enforceable debt liability. This court is of the considered view that defence of the accused is probable for the reasons mention hereinafter. Firstly, the the alleged loan transaction of ₹ 4,95,000/- and issuance of the cheque in question both are surrounded by suspicious circumstances. The complainant has not mentioned any date and details of amount given to the

accused in his complaint, legal notice and affidavit and during cross-examination she is unable to satisfy the conscious of the court in this regard. She led Ex. C6 some diary/ entries as to detail of lending of amount but non of the entry has been signed by the accused as acknowledgement of the loan. Further more, the complainant has even failed to show her capacity to lent such a huge amount of ₹ 4,95,000/- as interest free loan rather in this regard her oral testimony is vague, inconsistent and shaky as she says that some amount was withdrawn from the bank and some was taken from her brother and some was from her uncle but she is unable to tell the date and detail of taking of these amount from these sources and none of them was examined. Secondly, the complainant has stated in her complaint and demand notice that cheque in question was handed over by the accused to her on 23.3.2013, whereas same has been denied by the complainant during her cross-examination and stated that it has been issued on 21.3.2013. It is a material contradiction as to issuance/execution of cheque in question. Moreover, there was no occasion for the accused to issue the cheque in question for such a huge amount on both the aforesaid dates as on 21.3.2013 he had allegedly fighting incident with the complainant as per her complaint Ex.D1 and on 23.3.2013 accused was in the police custody at about 7.30 P.M. Altogether accused was having bitter relationship with the complainant on 21.3.2013 and 23.3.2013 because he was facing criminal allegations. In such a situation it seems highly improbable that accused can issue the cheque in question. Thirdly, the cheque in question has been signed in Hind and the body of the cheque in question has been filled up in English with different pen and different ink which shows that the cheque in question has been filled up by the person other then the accused. On the other hand, the complainant has failed to substantiate her version as to alleged outstanding

liability of the accused of the cheque amount" . Fourthly, the affidavit Ex. C5 allegedly executed on 10.10.2013 but its execution has been denied by the accused and complainant has not proved its due execution by calling the concern Notary who has attested this. Rather CW1 has stated that affidavit was handed over in June/July, 2013 which further raises suspicion about its execution. For the sake of argument, even if it is taken as a genuine then also it has been clearly mentioned that amount of ₹ 4,95,000/- taken by the accused from the complainant and in discharge of debt he issued the cheque bearing no.004692 to the complainant. But this number has been written by pen after ward on dotted! line which further deepen the suspicion. about the version of the complainant and it has been mentioned that regarding dishonor of this cheque case under Section 138 of the N.I. Act is pending against the accused but now the accused has made a cash payment of ₹ 4,95,000/- and now nothing is balance against him nor there is any dispute between the parties. Therefore, this affidavit even if it is taken as a genuine then also it do not corroborated the version of the complainant as it should be read as a whole and favorable. Part leaving unfavorable cannot be read as it has been produced by complainant, thought it is not signed by her. Fifthly, mere non stepping of the accused in the witness box or non replying of the legal notice alone is not sufficient to prove the case of the complainant because the accused has shifted the onus upon the complainant to prove the outstanding liability of the cheque amount but the complainant has failed to do so by leading some clear and cogent evidence. It is settled law that benefit of doubt must be given to the accused.

Keeping in view the above discussion, the accused is acquitted from the allegations levelled against him by giving the benefit of doubts. His bail bond and surety bond also stand discharged. File be consigned to the record room after due

compliance.”

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 with the merit of the appeal against acquittal, (iii) Though, the power of the appellate

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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.

Dismissed.

(Paramjeet Singh)
Judge

June 29, 2015
R.S.