

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

CRM-M-4888 of 2012

Date of decision: 6.10.2015

M/s Shree Balaji Traders through its Proprietor Premo Devi

... Petitioner

Vs.

S.R. Enterprises through its Proprietor Sh. Ram Mehar Sharma alias
Shivla

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rakeh Gupta, Advocate
for the petitioner.

2. To be referred to the reporters or not? YES/NO

3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Feeling aggrieved against the impugned judgment dated 4.10.2011 passed by the learned Additional Sessions Judge, Karnal, whereby revision filed by the petitioner was dismissed, upholding the impugned judgment of acquittal dated 8.11.2010 passed by learned Judicial Magistrate 1st Class, Karnal, petitioner has approached this Court by way of instant petition.

Brief facts of the case, as recorded by learned trial court in para 2 of the impugned judgment, are that the complainant firm was dealing in the business of selling of all kinds of marbles, slabs, tiles, cement etc. and the accused purchased sand and cement from

the complainant firm on credit basis. In discharge of his liability, accused issued the cheque in dispute bearing No. 1032182 dated 30.3.2007 for a sum of ₹6,00,000/- drawn on his account maintained by him in Bank of India, Panipat, in favour of the complainant firm. However, the cheque in dispute, when presented for encashment, was received back unpaid for want of sufficient funds. Since the accused did not make the payment of cheque amount with the prescribed timeframe even after receiving statutory notice, the complainant was constrained to file a complaint.

In the preliminary evidence, complainant firm examined its proprietor-Premo Devi as CW1 and closed the evidence after proving on record the requisite documents relied upon by her, including disputed cheque Ex.CW2/A, returning memo as Ex.CW3/A, memorandum of Corporation Bank as Ex.CW4/A, postal receipt as Ex.CW5/A and copy of legal notice Ex.CW6/A.

After hearing learned counsel for the complainant and going through the documents placed on record by the complainant, the accused was ordered to be summoned to face trial for the offence under Section 138 of the Negotiable Instruments Act, ('NI Act' for short). On appearance, accused was enlarged on bail. Notice of accusation was served upon the accused to which he pleaded not guilty and claimed trial.

In the post accusation evidence, complainant failed to produce even a single witness, despite availing sufficient opportunity and the evidence of the complainant was closed by court order. Since the complainant failed to produce even a single witness,

recording of statement of the accused under Section 313 Cr.P.C, was dispensed with.

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 failed to bring home the guilt against the accused. Accordingly, the complaint was dismissed and accused was acquitted of the charges framed against him, vide impugned judgment of acquittal dated 8.11.2010.

Dissatisfied, the impugned judgment of acquittal was challenged by the complainant, by way of revision petition, but the said revision was dismissed on account of non maintainability by the learned Additional Sessions Judge, vide impugned judgment dated 4.10.2011. Hence the present petition, at the hands of complainant.

Learned counsel for the petitioner submits that the complainant brought cogent and convincing evidence on record, which was sufficient to record conviction of the accused person. However, since the learned courts have failed to appreciate the documentary evidence in correct perspective, the impugned judgments have resulted in miscarriage of justice. He concluded by submitting that so far as issue of non producing of even a single witness is concerned, in the present case, documentary evidence which was brought on record was sufficient to record the conviction. He prays for setting aside the impugned judgments, by allowing the present criminal petition.

Having heard the learned counsel for the petitioner 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 keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned judgment passed by the learned trial court would show that the learned trial court has discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at its judicious conclusion. Having said that, this Court feels no hesitation to conclude that the learned trial court committed no error of law, while passing its impugned judgment of acquittal and the same deserves to be upheld.

So far as revision filed by the complainant is concerned, the learned revisional court rightly dismissed the same on account of maintainability in meticulous compliance of the law laid down by the Hon'ble Supreme Court in Damodar S. Prabhu Vs. Sayed Babalal H. 2010 (2) RCR (criminal) 851.

Moreover, the present case can be said to be a no evidence case, because the complainant has failed to examine even a single witness, except herself, so as to prove whether the cheque in dispute was actually issued by the accused in her favour or not and whether the same was returned back unpaid for want of sufficient funds.

It is the settled principle of law that wherever two views are possible, the view which goes in favour of the acquittal, deserves to be adopted by the Courts. It is not even the argued case on behalf of the petitioner that the view taken by the learned trial Court as well as by the learned Additional Sessions Judge was not one of the possible views. In this view of the matter, it can be safely concluded that the impugned judgments of acquittal do not suffer from any illegality and the same deserve to be upheld, for this reason also.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.**

The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in the case of Arulvelu (supra) read as under:

"In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court.*

The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the

court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

The law laid down by the Hon'ble Supreme Court in **Arulevlu's** case (supra) has also been followed by a Division Bench of this Court in the case of **State of Haryana v. Aman Kumar and another 2012 (3) RCR (Crl.) 330** and judgment dated 2.11.2012 passed by this Court in **CRM-A- 284-MA-2011 (Baljeet Singh v. State of Punjab and others)**.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Arulvelu's** case (supra), it is unhesitatingly held that the learned courts were well justified on facts as well as in law, for

passing the impugned judgments of acquittal and the same deserve 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 the present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

06.10.2015
AK Sharma