

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3887-2013 (O&M)
Date of decision: 16.11.2015

Nirvair Singh Bakshi

... Petitioner

Vs.

Ravi Kumar

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
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.

Present criminal revision petition, at the hands of complainant, is directed against the impugned judgment dated 12.09.2013 passed by learned Additional Sessions Judge, whereby appeal of the petitioner was dismissed, upholding the impugned judgment of acquittal dated 05.04.2011, passed by learned Judicial Magistrate 1st Class, Jalandhar.

Brief facts of the case, as recorded by learned Additional Sessions Judge in para 5 to 7 of the impugned judgment, are that the petitioner filed a complaint against the respondent for an offence punishable under Section 138 of Negotiable Instruments ('N.I. Act' for short). It was alleged in the complaint that the respondent was known to the complainant for the last many years. They had friendly and cordial relations with each other. The

respondent took an amount of Rs.4,00,000/- from the complainant for sale of his shops but later on, he did not fulfill his promise. So, the complainant asked him repeatedly to execute the sale deed in his favour but with no effect. Ultimately, he entered into an agreement on 12.08.2005 with the complainant, vide which he gave a post-dated cheque No.368817 dated 12.10.2012, drawn on HDFC Bank, Jalandhar of Rs.4,00,000/-. It was ensured by him that cheque would be encashed as and when presented in the Court and he would not stop the payment or cancel the cheque. It was further stated that the petitioner presented the cheque to his bank i.e. UCO Bank for encashment but the cheque was returned unpaid vide memo dated 25.10.2010 with the remarks "Account Closed". So, the complainant demanded the payment of the dishonoured cheque through registered legal notice dated 05.11.2007 from the respondent and also approached him for the said purpose, who assured to make the payment but he failed to do so. Hence, the complaint was filed.

After considering the preliminary evidence led by the complainant, the learned trial Court summoned the accused to face criminal trial for the offence under Section 138 of N.I. Act. On appearance of the accused-respondent before the learned trial Court, notice of accusation was served upon him for the offence punishable under Section 138 of N.I. Act. In pre-charge evidence, complainant himself appeared as CW1, besides producing other documentary evidence.

After closing the evidence by the complainant, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure ('Cr.P.C.' for short). The accused denied the allegations, pleaded false implication and claimed complete innocence. In his defence, accused

examined Rajesh DW1 and Dinesh Kumar, Clerk, Judicial Record Room, Jalandhar and closed the defence 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 failed to bring home the guilt against the accused. Accordingly, accused was acquitted, vide impugned judgment of acquittal dated 05.04.2011.

Dissatisfied, the impugned judgment of acquittal was challenged by the complainant, by way of appeal which also came to be dismissed by learned Additional Sessions Judge, vide impugned judgment dated 12.09.2013. Hence this criminal revision 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. However, since the learned Courts have failed to appreciate the evidence in correct perspective, the impugned judgments have resulted in miscarriage of justice. He prays for setting aside the impugned judgments, by allowing the present criminal revision petition.

Having heard the learned counsel for the petitioner, 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 revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of both the impugned judgments would show that the learned Courts have discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at their judicious conclusions. Oral as well as documentary evidence was appreciated in the correct perspective. Having said that, this Court feels no hesitation to conclude that the learned Courts have committed no error of law, while passing their respective impugned judgments of acquittal and the same deserve to be upheld.

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 (Cr1.) 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 **Arulvelu'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 **CRM-A-284-MA-2011 (Baljeet Singh v. State of Punjab and others)**, decided on **02.11.2012** by this Court.

Reverting 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, in 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 criminal revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

16.11.2015
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