

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 12.02.2015**

% **CRL.L.P. 652/2014**

M/S MATA VAISHNO FINSEC (P) LTD

..... Petitioner

Through: Mr. Madhu Sudhan Bhayana,
Advocate

Versus

SHAILENDER

..... Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (OPEN COURT)

1. The present petition, preferred under Section 378 Cr PC seeks leave to appeal against the judgment dated 19.07.2014 passed by the learned MM-1 (NI Act), South-West District, New Delhi in CC No.4612/2014, “M/s Mata Vaishno Finsec Pvt. Ltd. v. Shailender”, whereby the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (the Act) for dishonour of cheque issued by the respondent/accused for Rs.1,52,078/- has been dismissed.

2. The accused admitted his signatures on the cheque in question. However, he denied the other allegations of the petitioner. The case of the petitioner was that upon the respondents request, the petitioner had

disbursed a personal loan of Rs.1,60,000/- to the accused in the month of March 2009 repayable in 24 monthly instalments of Rs.8,533/- each. The accused was not regular in making payment of the instalments. In this background, to discharge his liability, the accused issued the cheque in question bearing no.371429 dated 28.01.2011 for Rs.1,52,078/- drawn on State Bank of India, Delhi University Branch, Delhi-110007. On account of dishonour of the cheque upon presentation for insufficient funds, after issuance of the statutory notice dated 22.02.2011 and waiting for the statutory period, the complaint was preferred.

3. Upon being summoned, the accused took the defence while making his statement under Section 313 Cr PC that he had entered into a Hire Purchase Agreement (HPA) with respect to a second hand RTV with the complainant and had not obtained any personal loan from the complainant. The accused claimed that while executing the HPA, the signatures were obtained on certain blank/stamp papers and 12 blank signed cheques were also obtained from him. The accused claimed that the parties had agreed that the vehicle in question would be transferred in the name of the accused. However, despite repeated requests, the complainant had failed to do so and, consequently, the accused stopped payment. Thereafter the vehicle was also re-possessed by the complainant.

4. The accused examined himself as DW-1 and exhibited several documents, which are as follows:

- i) Payment receipts – Ex. DW-1/1 to DW-1/9
- ii) Fitness certificate of RTV - DW-1/10

- iii) Copy of insurance certificate – DW-1/11
- iv) PUCC certificate – DW-1/12
- v) Registration certificate of RTV – DW-1/13
- vi) Fine receipt for challan of RTV – DW-1/14
- vii) Letters issued by the complainant – Ex.DW-1/16 & DW-1/17

5. The discussion found in the impugned order, on the basis of which the learned Magistrate came to the conclusion that the accused had raised a probable defence reads as follows:

“9. It was argued by the learned defence counsel that the documents on record would clearly establish that the same have been fabricated by the complainant to show that a personal loan was availed by the accused. It was pointed out that the code number of the loan i.e. MVFS/794 mentioned on the account statement Ex CW1/D3, which is a document relied upon by the complainant, is same as that mentioned on the documents Ex DW1/15, Ex DW1/16 and Ex DW1/17. A perusal of Ex DW1/15 would show that same loan number has been mentioned and the ‘asset’ has also been mentioned as an RTV. However the said document is a mere photocopy and hence, not admissible in evidence. Ex DW1/16 is a letter dated 07.07.2010 issued on behalf of the complainant to one Sanjay Kumar Saxena authorising him to seize the RTV bearing registration no.DL1VA 2462 which was the subject matter of a hire purchase agreement. It is noted that same loan number i.e. MVFS/794 has been mentioned on the said letter. Ex DW1/17 is also a letter dated 07.04.2010 issued on behalf of the complainant to the officer in charge of the police station intimating the repossession of the said RTV. The loan number mentioned on the said letter is also MVFS/794. It is

noted that the two letters have not been denied on behalf of the complainant and no suggestion questioning the genuineness of those two letters was put to the witness DW-1.

10. It was argued on behalf of the complainant that letters Ex. DW1/16 & Ex. DW1/17 were not written to the accused and further, they pertain to a different loan agreement as the name of hirer is mentioned as Ajay Kumar S/o Tarsem Lal in the two letters. As noted above, both the letters bear the same loan number i.e. MVFS/794 and undoubtedly, same pertains to a hire purchase agreement as is evident from a perusal of those letters. Interestingly, the same loan number has been mentioned in account statement Ex CW1/D3 which is a document placed on record on behalf of the complainant. In Ex CW1/D3, the loan has been shown as a personal loan and the name of accused has been mentioned as a borrower. No explanation was forthcoming from the complainant in this regard. It is apparent that either the case of the complainant is false and based on wrong facts that the accused had availed a personal loan or that the complainant has issued the same loan number to two different people, which seems improbable. In either case, the case of the complainant cannot stand and is liable to be dismissed.

11. It was argued on behalf of the complainant that the accused did not examine Mr. Ajay Kumar, who is the registered owner of the RTV and hence, it was not proved that the vehicle was given on hire purchased to the accused. However, as discussed above, the documents on record bely the claim of the complainant. The deposition of Ajay Kumar would indeed have shed more light on the case at hand however, it is no longer res integra that whereas the onus on the complainant is to prove his case beyond reasonable doubt, the one on the accused is that of mere balance of probabilities.

The accused is not required to prove his case beyond shadows of doubt and is only required to raise a probable defence.

12. In the instant case, the documents on record support the case of the accused in as much as the loan number mentioned as documents placed on record by the accused as well as those placed on record by the complainant is the same. No explanation has come from the complainant's side to explain the contradiction".

6. Learned counsel for the petitioner submits that since the respondent had admitted his signatures on the cheque, a presumption arose under Section 118(a) and 139 of the Act against the accused. He submits that the accused had not rebutted the said presumption. It is submitted that the RTV was not registered in the name of the accused. Therefore, the story set up by him that he had agreed to purchase a second hand RTV is not believable.

7. A perusal of the impugned order itself shows that the case of the accused was that he had entered into an agreement to purchase, on hire purchase basis, a second hand RTV. His further case was that since the RTV was not transferred in his name, he had stopped making payment of the instalments. He had also claimed that he had not taken home loan as claimed by the complainant. Therefore, the fact that the RTV was not registered in the name of the complainant, is neither here nor there. Pertinently, the code number of the loan as maintained by the complainant itself, was MVFS/794, which finds mention in the account statement Ex CW-1/D3. The same code number is mentioned on the document Ex. DW-1/15, DW-1/16 and DW-1/17. Ex. DW-1/15 shows the same loan code number and the "asset" has been mentioned as the RTV. The same being a

photocopy was held to be not admissible in evidence. Ex DW-/16 is the letter dated 07.07.2010 issued on behalf of the complainant, authorising Sanjay Kumar Saxena to seize the RTV bearing registration no.DL1VA 2462 – the subject matter of the HPA. The same loan code number MVFS/794 has been mentioned on the said letter. Ex DW-1/17 is the letter dated 07.04.2010 issued on behalf of the complainant to the officer-in-charge of the police station intimating the re-possession of the said RTV. Once again, the loan code number mentioned on the said letter is the same, i.e. MVFS/794. The petitioner did not deny these letters, and no suggestion was given to the accused/DW-1 questioning the genuineness of these letters.

8. The petitioner could not explain as to why the same loan code number, which was mentioned in the loan document pertaining to the RTV (wherein the name of the hirer was mentioned as Ajay Kumar, s/o. Tarsem Lal) was mentioned in the account statement Ex. CW-1/D3, which pertained to the respondent/accused. The complainant did not claim that the same loan code number was used in respect of two different loan transactions with two different persons – one being Ajay Kumar (in respect of a vehicle loan), and the other being the accused in respect of a home loan. Thus, the accused raised a probable defence to create sufficient doubt in the mind of the court, and it cannot be said that the offence stood established beyond reasonable doubt.

9. The parameters applicable for consideration of a leave petition against the judgment of acquittal have been set out in *Guru Nanak Tractors Vs. Swarn Singh*, 2014 (3) RLR (CRI) 601. The relevant extract from the said decision reads as follows:

“8. Their Lordships of the Supreme Court in 'Allarakha K. Mansuri v. State of Gujarat, 2002 (1) RCR (Cri) 748', held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court. This view has been reiterated in *State of Goa v. Sanjay Thakran*, (2007) 3 SCC 755', and '*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415'.

9. A Division Bench of this Court in '*State of Punjab v. Hansa Singh*, 2001(1) RCR (Cri) 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 misreading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference”*

*In *Mrinal Das & others v. The State of Tripura*, 2011 (9) SCC 479', decided on September 5, 2011, the Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:*

“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.

10. Similarly, in the case of '*State of Rajasthan v. Shera Ram alias Vishnu Dutta*, (2012) 1 SCC 602', the Hon'ble Supreme Court has observed as under:-

“7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for”.

11. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:-

“10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience”.

10. Thus, this Court would consider granting leave to appeal only if the judgment under appeal appears to be perverse, or based on misappreciation of the evidence. If the Trial Court has accepted one of the two possible views and acquitted the accused, this Court will not grant leave to appeal merely because it may be inclined to take a different view.

11. In my view, there is no perversity or misappreciation of evidence discernible from the impugned judgment, which has reaffirmed the innocence of the accused. Accordingly, the present petition is dismissed.

VIPIN SANGHI, J

FEBRUARY 12, 2015

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