

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

CRM-A-356-MA-2016 (O&M)

Date of decision : 04.07.2016

Vinod Kumar

...Applicant-Appellant

Versus

Smt. Kaushlya Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Naveen Singh Panwar, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This leave to appeal is directed against the impugned judgment dated 04.01.2016, passed by learned Additional Chief Judicial Magistrate, Sonipat whereby the accused-respondent was acquitted of the charges framed against her under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act').

It is contended that the appellant had advanced a loan amounting to ₹1,85,000/- to the respondent and to discharge her liability respondent issued cheque dated 05.04.2013 in favour of the appellant. However, on presentation of the same, it was returned by the bank with the remarks 'exceeds arrangement'. There is no dispute with regard to signature over the alleged cheque. In this way, the appellant has proved all the material ingredients to constitute the offence under Section 138 of the Act

against the respondent and the impugned judgment is liable to be set aside.

I have heard the learned counsel and carefully perused the entire record on file.

The learned trial Court has passed the impugned judgment after considering the oral as well as documentary evidence, Ex.D8 and Ex.D9, whereby the appellant had given the details of loan made to the son of the respondent i.e. Sandeep and also given the details of repayment made by the said Sandeep in the Panchayat. The factum of execution of the said exhibits is duly proved from the testimonies of DW2, DW3 and DW5, wherein they have deposed that Panchayat was convened and in their presence, complainant had given the details of repayment of loan by Sandeep. Further, the appellant has not furnished the details as to when the amount of loan had been advanced to the respondent. Even in his cross-examination, the appellant had admitted the factum of repayment of loan by son of the respondent.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Keeping in view the above, the finding of acquittal recorded by

the trial court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial court for acquitting the respondent, this Court feels that learned Additional Chief Judicial Magistrate, Sonipat, has passed the impugned judgment dated 04.01.2016, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly the leave to appeal is declined.

Dismissed.

04.07.2016

ashok

(JITENDRA CHAUHAN)
JUDGE