

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

CRM-A-1266-MA-2015 (O&M)

Date of decision : 06.12.2016

Ajit Kumar Jain

...Applicant-Appellant

Versus

Mukhtiar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. M.S. Rana, Advocate and
Ms. Gagneet Kaur, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

CRM-24161-2015

Heard.

Keeping in view the averments made in the application, the same is allowed. The delay of 22 days in filing the present appeal against acquittal is hereby condoned.

Main Case

This special leave to appeal is directed against the judgment dated 25.03.2015, passed by learned Judicial Magistrate 1st Class, Ludhiana whereby, the accused-respondent was acquitted of the charges framed against him under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act').

It is contended that the respondent in connivance with co-accused have played fraud upon the applicant-appellant and received a sum of Rs.87,82,000/- as a part of sale consideration, which was ultimately not executed/materialised. After this fact came to the notice of the applicant-appellant pleaded with the respondent to return the amount of his share i.e. Rs.15,00,000/- from the said amount. Thereafter, the respondent entered into a compromise with the applicant-appellant and agreed to pay a sum of Rs.10,00,000/- towards discharge his partial legal enforceable liability towards the applicant-appellant. To discharge his liability, respondent issued five cheques in favour of the applicant-appellant. However, on the presentation of cheque bearing No.322013, it was dishonoured by the bank with the remarks 'Funds Insufficient'. There is no dispute with regard to signature over the alleged cheque and its content. It is asserted that in this manner, the applicant-appellant has proved all the material ingredients to constitute an offence under Section 138 of the Act against the respondent.

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

In **State of UP Vs. Ram Sajivan and others**, 2010 (1) SCC 529, Hon'ble the Supreme Court of India, observed as under:-

*“In the case of **Raj Narain v. State of U.P. & Others** [Criminal Appeal Nos. 891-892 of 2002 decided on 18.09.2009], this Court reiterated the aforesaid view and held that even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. However, this Court will not hesitate to interfere with*

such order if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust.”

The case of the applicant-appellant is that the respondent along with other accused had received an amount of Rs.87,82,000/- for a property deal, which was ultimately not executed/materialised. However, when he was asked about the handing over of money to the accused he could not specify the date, month or even year of the same. Moreover, the transactions did not find a mention in his Income Tax Returns. Further into the cross-examination, he stated that the amount of Rs.87,82,000/- was handed over by his father to the accused/respondent only but he had involved the names of all the persons. He had earlier stated that he met Rajwinder Singh @ Sukhwinder Singh, Rajinder Singh Biri, Gurmeet Singh and Balraj Singh and except these persons there was no other person who met the respondent during the purchase of the plot and he has purchased the plot from all these persons. Therefore, his case stands demolished by the contradictory statement which he suffered during his cross-examination. Meaning thereby, no plot has been purchased exclusively from the respondent. To prove the factum of property deal, the applicant-appellant has not placed on record any agreement to sell or purchase. He deposed that said amount was handed over by him, however, when he was asked whether he mentioned the said transaction in his Income Tax Return, he changed his version and stated that his father had given the said amount to the accused persons. In support of this fact, he has not even examined his father. Neither he disclosed the date,

time and month of advancement of said amount nor disclosed the source of such a huge amount.

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 Judicial Magistrate 1st Class, Ludhiana, has passed the impugned judgment dated 25.03.2015, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly the special leave to appeal is declined.

Dismissed.

06.12.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No