

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

CRM-A-1320-MA-2014 (O&M)

Date of decision : 24.10.2016

Parveen Mehta

...Applicant-Appellant

Versus

Rajeshwar Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Veneet Sharma, Advocate with
Mr. Sandeep Sharma, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal has been filed against the judgment dated 08.07.2014, passed by learned Judicial Magistrate Ist Class, Amritsar 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 appellant had advanced a loan amounting to ₹1,00,000/- to the respondent and to discharge his liability for the same, the respondent issued cheque dated 03.06.2011 in favour of the appellant. However, on the presentation of the same, it was dishonoured by the bank with the remarks 'Payment stopped by the drawer'. There is no dispute with regard to signature over the alleged cheque. It is asserted that

in this manner, the 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.”*

In the instant case, the appellant stated that the respondent had obtained a loan of ₹1,00,000/- and for making the payment of the same he issued a cheque, which was got dishonoured on presentation. On the other hand, the respondent had stated that he had given the blank cheque as a security to the complainant against a loan amounting to ₹20,000/-. During the cross-examination, the appellant had disclosed that regarding the advancement of said loan, he noted down in his diary. However, he had not produced on record the same. Except the bald statement of the appellant, the appellant has not led any oral or documentary evidence to prove the advancement of loan.

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 Ist Class, Amritsar, has passed the impugned judgment dated 08.07.2014, 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.

24.10.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No