

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

CRM-A-1588-MA-2015 (O&M)
Date of decision : 21.11.2016

Satpal

...Applicant

Versus

Gurmail Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Satnam Singh Gill, Advocate,
for the applicant.

JITENDRA CHAUHAN, J.

The applicant seeks special leave to appeal against judgment dated 16.07.2015, passed by learned Judicial Magistrate 1st Class, Kurukshetra (for short, 'the trial Court'), thereby, acquitting the accused-respondent in criminal complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

It is the case of the complainant that there was a family relation between him and the accused for the last two years and as such, the accused had borrowed a sum of Rs.60,000/- on 28.03.2011, to be returned in three months therefrom. In order to discharge his liability, the accused furnished a cheque of Rs.60,000/- on 25.07.2011, bearing No.144630 drawn at HDFC Bank, Kurukshetra. Upon presentation, the cheque was returned vide memo dated 27.07.2011, with the remarks 'account closed'. The matter was taken up with the accused and upon assurance, the complainant again presented the cheque in September, 2011, but it was again dishonoured with the

remarks 'account closed' vide memo dated 24.09.2011. The cheque was presented third time on 05.11.2011, and it was again dishonoured vide memo No.7.11.2011. Thereafter, legal notice dated 24.11.2011, was served upon the accused but neither the payment was not nor the same was replied. Hence, the complaint under Sections 138 and 142 of the Act.

The complainant got recorded preliminary evidence and on finding a prima facie case, the accused was summoned to face trial under Section 138 of the Act.

In order to prove his case, the complainant examined himself as CW1, whereas Vikrant was examined as CW-2. Thereafter, the complainant closed his evidence. The statement of the accused under Section 313 Cr.P.C. was recorded wherein, he denied all the allegations levelled against him. However, he did not examine any witness in defence.

After hearing learned counsel for the parties and appreciating the evidence on record, learned trial Court dismissed the complaint and acquitted the accused-respondent of the charges framed against him.

Hence the instant application.

In the instant case, the first and foremost question to be answered is whether there ever existed any legally enforceable debt or liability of the accused towards the complainant. It is the case of the complainant that upon presentation, the cheque was returned as dishonoured for the first time on 27.11.2011. Thereafter, it was against presented in the month of September, 2011, i.e. after the lapse of the period of limitation for issuance of legal notice i.e. 30 days. In order to explain the delay, the complainant stated that he had been assured by the accused that the cheque

would be encashed second time. However, there is no proof of any such assurance, either in the form of call record or otherwise.

In his cross-examination, the complainant stated that there was no written proof of transaction between him and the accused. He has further stated that at the instance of his son Rahul, who wanted to go abroad, the complainant gave the amount of Rupees sixty thousand to the accused, however, for the reasons best known to him, the Rahul has not been examined. On the contrary, it has come on record that the son and brother of the complainant are settled abroad. The complainant has also not examined Amar Singh to prove the fact that the money lent by him to the accused was received from said Amar Singh as lease money. Further, handing of the cheque was allegedly made in the presence of Vijay but he was also not examined to prove the reason for handing the cheque.

In the above background, the assertions with regard to payment of Rupees sixty thousand by the complainant to the accused and in lieu thereof, handing over of cheque in question by the accused to the complainant, are not proved.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (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 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.

In *State of Rajasthan vs Shera Ram @ Vishnu Dutta, (2012) 1*

ATUL SETHI
2016.12.05 16:41
I attest to the accuracy and
authenticity of this document
Chandigarh

SCC 602, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the

prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

The complainant's version is surrounded by doubts and suspicion and merely on the basis of the admission of signatures by the accused on the cheque in question, he cannot be held guilty for its dishonour without any proof of a legally enforceable liability. In the case of ***Indus Airways (P) Ltd. Vs. Magnum Aviation (P) Ltd., (2014) 12 SCC 539***, Hon'ble the Supreme Court has observed as under:-

“The Explanation appended to Section 138 of the NI Act explains the meaning of expression “debt or other liability” for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque.

In other words, drawal of the cheque in discharge of existing or past adjudicated liability is a sine qua non for bringing an offence under Section 138.”

In the instant case, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record.

In view of the above discussion, this Court is of the considered opinion that the findings recorded by the trial Court are based on correct appreciation of facts and evidence on record and no illegality of perversity can be said to have been committed by it. The complainant has miserably failed to prove his case against the accused-respondent beyond a shadow of reasonable doubt.

In view of the above, the present application is dismissed and the impugned judgment rendered by the trial Court is affirmed.

Special leave declined.

21.11.2016
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No