

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

CRM-A-199-MA-2015 (O&M)
Date of decision : 09.08.2016

Kamlesh Rani ...Applicant-Appellant

Versus

Sanjeev Arora ...Respondent

CRM-A-201-MA-2015 (O&M)

Kamlesh Rani ...Applicant-Appellant

Versus

Sanjeev Arora ...Respondent

CRM-A-251-MA-2015 (O&M)

Kamlesh Rani ...Applicant-Appellant

Versus

Sanjeev Arora ...Respondent

CRM-A-277-MA-2015 (O&M)

Kamlesh Rani ...Applicant-Appellant

Versus

M/s Kanhaya International and another ...Respondents

CRM-A-287-MA-2015 (O&M)

Kamlesh Rani ...Applicant-Appellant

Versus

M/s Kanhaya International and another ...Respondents

CRM-A-367-MA-2015 (O&M)

Kamlesh Rani ...Applicant-Appellant

Versus

Sanjeev Arora ...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Umesh Kanwar, Advocate for
Mr. Vikas Mehsempuri, Advocate
for the applicant-appellant (s).

JITENDRA CHAUHAN, J. (Oral)

CRM-3438-2015 in CRM-A-199-MA-2015

Heard.

For the reasons contained in the application, same is allowed and delay of 15 days in filing the present special leave to appeal is condoned.

CRM-3441-2015 in CRM-A-201-MA-2015

Heard.

For the reasons contained in the application, same is allowed and delay of 33 days in filing the present special leave to appeal is condoned.

CRM-5507-2015 in CRM-A-251-MA-2015

Heard.

For the reasons contained in the application, same is allowed and delay of 10 days in filing the present special leave to appeal is condoned.

CRM-5579-2015 in CRM-A-277-MA-2015

Heard.

For the reasons contained in the application, same is allowed and delay of 14 days in filing the present special leave to appeal is condoned.

CRM-5606-2015 in CRM-A-287-MA-2015

Heard.

For the reasons contained in the application, same is allowed and delay of 12 days in filing the present special leave to appeal is condoned.

CRM-7362-2015 in CRM-A-367-MA-2015

Heard.

For the reasons contained in the application, same is allowed and delay of 10 days in filing the present special leave to appeal is condoned.

Main Cases

This single judgment shall dispose of the aforesaid six special leave to appeals.

These special leave to appeals have been filed against the judgment dated 27.10.2014, passed by learned Judicial Magistrate First

Class, Ludhiana, whereby the accused-respondent(s) were acquitted of the charges framed against them under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act').

The learned counsel appearing for the applicant-appellant(s) states that the respondent(s) had taken a loan amounting to Rs.20 lacs from the applicant-appellant(s) and in discharge of his liability, respondent(s) issued 10 cheques in her favour. However, on presentation of the same, those got bounced with the remarks 'Payment stopped by drawer'. In this way, the appellant(s) has proved all the material ingredients to constitute the offence under Section 138 of the Act against the respondent(s) and the impugned judgments are liable to be set aside.

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

In the instant case, the accused/respondent had denied his legally enforceable liability or legal payable debt by pleading that the cheques in questions had come into the hands of complainant/appellant through her daughter (wife of accused/respondent) against whom he had filed a divorce petition which was pending. In order to prove legal payable debt against the respondent, the financial capacity of the appellant shall be proved as well. As per the appellant, she had advanced a sum of ₹20 lacs to the respondent. However, she had failed to prove on record her source of income. The appellant is an old widow lady and was the sole bread winner of her family. She had even failed to produce any person as witness to

substantiate her statement that she had taken the said amount on loan from several persons. She was unable to prove on record the factum of advancement of loan to accused-Sanjiv Arora and was further unable to tell the date, month and/or year of the same. Furthermore, she had not mentioned the loan in her Income Tax Returns. Therefore, this Court is of the view that the learned trial Court has rightly decided the cases of the appellant(s) as she failed to prove her financial capacity to advance the loan; its advancement; and the legally enforceable liability of the respondent(s).

In **State of UP Vs. Ram Sajivan and others**, 2010 (1) SCC 529, the Hon'ble 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.”*

Furthermore, it 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(s), this Court feels that learned Judicial Magistrate First Class, Ludhiana, has passed the impugned judgment dated 27.10.2014, after appreciating the entire facts and circumstances of the present cases and no other view is possible.

Accordingly, the special leave to appeals are declined.

Dismissed.

09.08.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No