

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

CRM-A-496-MA-2015 (O&M)

Date of decision : 12.07.2016

Rajiv Dahiya

...Applicant-Appellant

Versus

Smt. Ramrati

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Bijender Dhankar, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 09.02.2015, passed by learned Judicial Magistrate Ist Class, 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 ₹5,00,000/- to the respondent and to discharge her liability respondent issued cheque dated 04.04.2011 in favour of the appellant. However, on presentation of the same, it was returned by the bank with the remarks 'funds insufficient'. 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.

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.”*

In the instant case, the appellant pleaded that the respondent had obtained a loan of ₹5,00,000/- for making payment to the labor and for payment of the installment of a car, however, there is nothing on record that the respondent or her husband, namely Rohtash ever purchased or in possession of any car. He further states that the loan amount was given in the presence of his friend, Ombir, but the petitioner did not examine this only witness to prove the factum of advancement of loan. The respondent had stated that she had given the blank cheque as a security to the complainant against a loan amounting to ₹10,000/-, which she received at the time of illness of her child. Further, the appellant has miserably failed to

disclose the source of loan amount i.e. ₹5,00,000/-. Further, the petitioner did not disclose the loan amount in his income tax return despite his being an income tax assessee. The appellant has claimed to be earning ₹25,000/- per month plus income from agricultural work, therefore, it cannot be assumed that he was having such a huge amount in hand.

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, Sonipat, has passed the impugned judgment dated 09.02.2015, 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.

12.07.2016

ashok

(JITENDRA CHAUHAN)
JUDGE