IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-689-MA-2015
Date of decision:- September 26, 2016

Shyam Gupta

.....Applicant..

Vs.

Vijay Kumar and another

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Amit Jain, Advocate
for the applicant.

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JASPAL SINGH, J.

Vide this judgement, this Court shall dispose of application under Section 378 (4) of the Code of Criminal Procedure preferred by Shyam Gupta seeking special leave to appeal against the judgment of acquittal dated March 10, 2015 passed by Judicial Magistrate Ist Class, Gurgaon, in criminal complaint RBT No. 129/2013, dated 03.12.2013, captioned as ***"Shyam Gupta vs. Vijay Kumar & another"***, under Sections 138, 141 and 142 of the Negotiable Instrument Act (for short 'Act').

2. The facts giving rise to the instant lis are that the accused had borrowed a sum of ₹4,00,000/- from the complainant and in

discharge of his liability, accused issued cheque bearing No. 321483, dated October 10, 2013 to the tune of ₹4,00,000/- in favour of complainant. The complainant presented the said cheque for encashment but the same was returned back with the remarks “funds insufficient” vide memo dated October 21, 2013. Thereafter, he sent a legal notice dated October 24, 2013.

3. On finding a *prima facie* case under Section 138 of the Act against the accused, they charge sheeted, to which they pleaded not guilty and claimed trial.

4. On conclusion of the complainant's evidence, when incriminating circumstances appearing in it were put to respondents-accused for eliciting their explanation as required under Section 313 Cr.P.C., they denied the same, pleaded false implication and claimed implication. However, in their defence accused No.1 examined himself as DW-1 and examined Bhim Sen as DW-2; besides, several documents.

5. After hearing learned counsel for the parties and appraisal of evidence brought on record by the parties, respondents/accused were acquitted of the charge vide judgment of acquittal dated March 10, 2015.

6. Feeling dissatisfied against the order of acquittal of respondents-accused, applicant-complainant preferred instant application seeking special leave to appeal to challenge the judgment/order of acquittal dated March 10, 2015

7. The contention of learned counsel for applicant is that the judgment of acquittal dated March 10, 2015 is not sustainable in the eyes of law and the same is absolutely against the evidence available on file and settled canons of law. Ld. Magistrate has ignored and disbelieved the cogent and trustworthy evidence adduced by complainant. Even, the documents placed and proved on record were also not taken into consideration by learned Magistrate while rendering the judgment of acquittal. Mis-appreciation of evidence has resulted into miscarriage of justice. Thus, it is necessary for the applicant/appellant to prefer an appeal.

8. After bestowing due consideration to the afore-said submissions made by learned counsel for applicant and appraisal of evidence as well as impugned judgment of acquittal, this Court is not in agreement with the various submissions made by learned counsel for the applicant/appellant.

9. Before proceeding to delve deep on the merits of the submission made by learned counsel for applicant, it would be desirable to consider the scope and jurisdiction of an appellate court to interfere with an order of acquittal.

10. Section 378 of the Code of Criminal Procedure provides that the complainant or aggrieved person may prefer an appeal to the High Court against an order of acquittal but sub-section 3 of Section 378 of the Code of Criminal Procedure explicitly envisages that no

appeal under subsections (1) and (2) shall be entertained except with the leave of the High Court which is a stage between an order of an acquittal and consideration of the judgment by the Appellate Court on merits as in the case of a regular appeal. It depicts that a judgment of acquittal is annexed with a definite value, which cannot be ignored by the Court. A presumption of innocence attached to an accused stands further fortified or reinforced by an order of acquittal. No doubt, Appellate Court, is empowered to re-appreciate, review and re-consider evidence before it but this power is required to be exercised keeping in view relevant principles of law relating to review, reweighing and re-appreciating of evidence in order to come to independent conclusions. The scope of interference by an Appellate Court in an order of acquittal was laid down by the Hon'ble Apex Court in case ***Sanwat Singh v. State of Rajasthan;*** 1961 SCR (3) 120 as follows:-

> *"The foregoing discussion yields the following results:(1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against*

> *acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."*

11. This principle was further reiterated by the Hon'ble Supreme Court in case ***Govindaraju @ Govinda v. State by Sriramapuram P.S. and another***; AIR 2012 SC 1292.

12. In the light of the aforesaid observations, it is evident that there is no embargo in law to re-appreciate, re-look, re-weigh, re-view or re-consider the entire evidence which is the foundation of an acquittal. On scanning of the evidence on record, if acquittal is found to be erroneous, perverse and against settled cannons of law, it should be set aside.

13. Now, this Court has to appraise and inspect carefully whether impugned judgment of acquittal suffers from any illegality, infirmity or is founded on an erroneous appreciation of the evidence or is perfectly justified.

14. Adverting to the facts of the case in hand, as per the case of respondent-accused borrowed a sum of ₹4,00,000/- from the applicant/complainant on October 10, 2013, in discharge of his

liability, he issued cheque bearing No. 321483 of even date. But in the case in hand issuance of cheque on October 10, 2013 is surrounded by material suspicious circumstances. Undisputably, Kishan Gupta, brother of the applicant/complainant rented out a shop to the respondent-accused at a monthly rent of ₹1500 per month in the month of May, 2009 and he paid the rent for three months. Subsequent thereto, the shop was vacated and possession thereof, was surrendered to the brother of applicant/complainant in the month of July 2009. There is a specific stand taken by the respondent-accused that a blank cheque was handed over to Kishan Gupta, brother of applicant/complainant in the month of July 2009, as a security, which stands established on record from the testimony of Bhim Sen, Special Assistant, Bank of India who has placed and proved on record a passbook Ex.DW2/A, account opening form Ex.DW2/B and ID proof Ex.DW2/C. The cheque book was issued to the respondent-accused at the time of opening of the afore-said account. A perusal of passbook Ex.DW2/A clearly reveals that the cheque bearing No. 321484 to 321500 of the same cheque book of which the cheque in question is also a part, were cleared in the month of January 2010. Thus the issuance of cheque No. 321483 on October 10, 2013 does not arise at all. Moreover, bank account in respect of which the cheque book containing cheques bearing afore-mentioned numbers were issued, was also closed in 2010 and the account was not operated since January

2010. This glaring circumstances substantiate the defence taken by the respondent-accused that the cheque in question was issued in the year 2009, as a security only to Kishan Gupta and not to the applicant/complainant in the discharge of any legal debt or liability. Another glaring circumstance which belies the case of the applicant/complainant is on account of the non-mentioning amount of ₹4,00,000/- allegedly advanced as loan to the respondent-accused. As per Section 269SS of the Income Tax Act, the income tax assessee is under an obligation to reflect the advancement of a loan in the books of account, if it exceeds ₹20,000/- but in the case in hand nothing of that sort has been done. Thus, the presumption attached under the Act stands rebutted. There is no plausible explanation furnished by the applicant/complainant that the cheque was issued for the valid discharge of legal debt or liability. As far as the factum of taking the shop belonging to Kishan Gupta, brother of the applicant/complainant is concerned, it is an admitted fact. So, taking the case of the applicant/complainant from either of the angles, it can be safely concluded that he has miserably failed to establish that the cheque in question was issued for the discharge of legal debt or liability. Rather, the evidence available on file has probablised the defence taken by the respondent-accused. Thus, this court is of the considered view that the judgment of acquittal cannot be said to be a result of either mis-appretiation of the evidence or that it is perverse or against the settled cannons of law. No ground is made out for the grant of leave to appeal.

15. In the light of aforesaid discussion, this Court does not find any merit in the instant application. As such, the same stands dismissed. Consequently, the accompanying appeal also stands dismissed.

September 26, 2016 **(JASPAL SINGH)**
sham **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*