

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

CRM-A-1095-MA-2015 (O&M)

Date of decision : 02.02.2017

Vivek

...Applicant-Appellant

Versus

Sh. Brij Bhan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Surinder Dagar, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

CRM No.20973 of 2015

Heard.

There is inordinate delay of 7 days in filing the application for special leave to appeal.

No satisfactory explanation is forthcoming to condone the delay as such, no case for condonation of delay is made out.

Dismissed.

Main Case

This special leave to appeal is directed against the impugned judgment dated 19.03.2015 passed by learned Judicial Magistrate 1st Class, Gurgaon whereby the accused-respondents were acquitted of the charges framed against them under Section 138 of Negotiable Instrument Act, 1881.

The learned counsel contends that the trial Court acquitted the accused-respondents by holding that the legally recoverable debt and liability was not proved, without appreciating the material facts on record. The alleged cheque was issued by the respondents to discharge their liability against the friendly loan of Rs.40 lakh, which they had taken from the appellant and signature on the cheque in question is of the accused-respondents. 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 respondents.

Heard.

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 this case, the appellant has failed to lead any cogent evidence which shows source of alleged amount qua transaction, wherein the same was advanced to the respondents. Except self serving statement of the appellant there is no material evidence on record to prove the factum of

legally enforceable debt of the accused towards appellant. Moreover, the transaction did not find a mention in his Income Tax Returns.

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.

Accordingly, the special leave to appeal is hereby dismissed on merits and being time barred.

02.02.2017

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No