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

CRM-A-60-MA-2016 (O&M)
Date of decision : 15.05.2017

M/s D.D. & Co. Peer Bodla Bazar ...Applicant-Appellant

Versus

S. Kikar Singh ...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present : Mr. Nimanyu Gautam, Advocate for the applicant-appellant.

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**JITENDRA CHAUHAN, J. (Oral)**

This special leave to appeal has been filed against the judgment dated 10.08.2015, passed by learned Judicial Magistrate 1st Class, Jalandhar whereby, the accused-respondent was acquitted of the charges framed against him under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act').

It is contended that the applicant-appellant had advanced a personal loan amounting to Rs.75,000/- to the respondent and to discharge his liability for the same, the respondent issued cheque dated 27.08.2010 (Ex.C1) in favour of the applicant-appellant. However, on the presentation of the same, it was dishonoured by the bank with the remarks 'Insufficient Funds'. It is asserted that the applicant-appellant has proved all the material ingredients to constitute an offence under Section 138 of the Act against the respondent.

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, 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."*

As per the case of the applicant-appellant, he had advanced a personal loan of Rs.75,000/- to the respondent and to return the same, respondent had issued cheque Ex.C1. On presentation, same was dishonoured with the remarks 'Insufficient Funds'. On the other hand, respondent has admitted that he had taken Rs.75,000/- from the applicant-appellant. But in lieu there of, applicant-appellant had obtained blank signed cheque from him as security. For the repayment of the said amount, applicant-appellant had deducted an amount of Rs.2500/- to Rs.3000/- per month from the salary of the respondent. Respondent had also paid Rs.39,715/- vide three cheques dated 05.05.2010, 05.10.2010 and 20.11.2010. These payments have been duly reflected in the statements of accounts of the applicant-appellant's firm i.e. Ex.DA, Ex.DB and Ex.DC and these entries have been duly admitted by him in his cross-examination. Once the respondent had already paid Rs.39,715/-, then there is no necessity for him to issue cheque in question for the amount of Rs.75,000/-. In these circumstances, the story putforth by the applicant-appellant is highly improbable. Moreover, he is unable to prove legally enforceable liability towards him on part of the respondent.

In **Chandrappa and Ors. v. State of Karnataka, 2007 (4) SCC 415**, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

> *"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of*

> *law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
>
> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

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 1st Class, Jalandhar, has passed the impugned judgment dated 10.08.2015, after appreciating the entire facts and circumstances of the present case and no other view is possible.

An application for condoning the delay of 46 days has also been filed along with the present leave to appeal.

On consideration, this Court feels that no satisfactory explanation is forthcoming to condone the delay, therefore appeal is dismissed on that score as well.

Dismissed.

**15.05.2017** **(JITENDRA CHAUHAN)**
*ashok* **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No