

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

**CRM-A-878-MA-2016
Date of decision-14.02.2017**

Mohd.Sharif

...Applicant-appellant

Vs.

Abdul Majeed @ MLA

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Tribhawan Singla, Advocate for
Mr. Harsh Goyal, Advocate for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This is an application under section 378(4) of the Code of Criminal Procedure for grant of leave to file appeal against the impugned judgment dated 20.02.2016 passed by Judicial Magistrate First Class, Malerkotla in complaint No.387 dated 23.09.2011 vide which the respondent was acquitted of offence under Section 138 of Negotiable Instruments Act.

It was the case of the complainant that respondent/accused borrowed a sum of Rs.17,00,000/- in cash for purchasing vegetables/goods. In order to discharge his liability, the accused issued six cheques bearing No.284605 dated 15.02.2011 for an amount of Rs.25,000/-, 284606 dated 16.02.2011 for an amount of Rs.2,50,000/-, 284607 dated 17.02.2011 for an amount of Rs.2,50,000/-, 284608 dated 18.02.2011 for an amount of Rs.25,000/-, 284609 dated 19.02.2011 for an amount of Rs.2,50,000/- and 284610 dated 20.02.2011 for an amount of Rs.25,000/- in favour of the complainant. When the complainant presented the said cheque for

encashment, the same was dishonoured vide memo dated 02.08.2011 on account of insufficient funds. The complainant served a legal notice dated 10.08.2011 upon the accused but the accused failed to make payment. Hence, the complaint.

The learned counsel contends that there is no dispute with regard to the signature over the alleged cheques. In this way, the appellant has proved all the material ingredients to constitute an 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.

The accused has asserted that neither the disputed cheques were issued in favour of the complainant nor had he any liability to pay to the complainant. The cheques in question were tampered with by the complainant.

The learned trial Court has passed the impugned judgment after considering the documentary evidence, i.e. report of the finger prints expert Ex.D1 alongwith photographs charts Ex.D2 to Ex.D19. The complainant, namely, Mohd. Sharif died during the proceeding and was represented through his legal representative, namely, Mohd. Rashid. In the cross-examination of legal representative of complainant, it has come on record that there was no material with him to substantiate the allegations levelled by his father against the accused. The alterations in the dates and amounts of

cheques is apparent. There is no bill or any balance sheet on record regarding purchase of vegetables/goods of Rs.17,00,000/- by the accused.

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 First Class, Malerkotla has passed the impugned judgment dated 20.02.2016, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly the leave to appeal is declined.

Dismissed.

(JITENDRA CHAUHAN)
JUDGE

February 14, 2017

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No