IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-905-MA-2016 (O&M)
Date of decision : 03.03.2017

Rajiv Kataria @ Raju
...Applicant-Appellant

Versus

Varunesh Sharma
...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Charanji Lal, Advocate
for the applicant-appellant.

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JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 05.03.2016, passed by learned Judicial Magistrate 1st Class, Gurgaon, whereby the accused-respondent was acquitted of the charges framed against him under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act').

It is contended that the appellant had advanced a loan amounting to ₹11,30,000/- to the respondent and to discharge his liability respondent issued cheque dated 20.11.2013 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."*

As per the case of the appellant, he advanced the friendly loan amounting to ₹11,30,000/- to the respondent. However, there is no evidence that the appellant had the capacity to advance ₹11,30,000/- or that amount allegedly given on loan to the respondent is shown in the Income Tax Return. On the other hand, respondent stated that the appellant had misused the cheque which he gave to his (appellant) brother, namely, Anurag for the security at the time of securing loan by respondent's friend Umesh. This fact is duly proved by the statement of independent witness i.e. DW2-Pushpender Singh. Except self serving statement of the appellant there is no material evidence on record to prove the factum of advancement of loan.

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 1st Class, Gurgaon, has passed the impugned judgment dated 05.03.2016, 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.

03.03.2017 **(JITENDRA CHAUHAN)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No