In the High Court of Punjab and Haryana at Chandigarh

CRM-A -1856-MA of 2015
Date of decision: August 29, 2017

Surjit Kaur .....Applicant

Versus

Vimmi and another ....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.L.S.Lakhnapal, Advocate for the applicant

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ARVIND SINGH SANGWAN, J.

Respondents had faced trial in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (`the Act' for short) qua dishonour of cheque dated 4.2.2013 in the sum of ₹ 85,000/-. Trial Court, vide order dated 4.9.2015, ordered the acquittal of the respondents. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.

It is submitted on behalf of the applicant that the trial Court has misread the evidence led by the appellant-complainant. From the evidence led by the appellant, it is proved that the cheque Exhibit C1 was dishonoured by the Bank and the appellant, while appearing as CW1, has also approved that the accused had taken a friendly loan from the complainant and, in lieu thereof, he had issued the cheque and,therefore, the same was issued in discharge of his legal liability.

I have heard the learned counsel for the applicant and have gone through the record available on the file carefully.

Trial Court, while ordering the acquittal of the respondent, on 4.9.2015 has held as under:-

> " Therefore, from the answers given by the complainant, one thing is crystal clear that no date, month and year of advancement of loan has been mentioned either in legal notice, complaint or affidavit Ex.C.W.1/A. However, complainant herself stated that the loan was advanced on 4.2.2013 when the cheque was issued by the accused. Complainant also admitted in her cross-examination that an FIR bearing No. 191 dated 21.9.2007 u/s 420 IPC has been registered against her and her husband on the complaint of the accused persons. She also admitted that one another case U/s 326, 459, 452 IPC is pending between her brother-in-law and accused. Therefore, it is not a disputed fact that there was a old criminal litigation pending between the parties since the year 2007, as such question of existence of friendly relationship thereafter does not arrive at all. This court is of the view that since both the parties have dragged into criminal litigation since 2007, therefore, question of advancement of friendly loan in the year 2013 does not arise at all. Accordingly, in view of the discussion made herein above, this court is of the view that accused has

successfully rebutted the legal presumption U/s 138, 139 of the Negotiable Instruments Act. Story of the complainant is altogether doubtful as she miserably failed to prove the existence of friendly relationship with the accused. Hence, the present complaint is not maintainable and the same is hereby dismissed and the accused are hereby acquitted from the notice of accusation having been served upon them. Bail bonds and surety bonds already furnished by the accused shall be kept intact for further six months and shall be treated bail bonds and surety bons u/s 437-A Cr.P.C. for the purpose to appear before the higher court, if any appeal or revision has been filed by the complainant against judgment of this court. After due compliance file be consigned to the record room"

The reasons given by the trial Court, while ordering the acquittal of the respondents, are sound reasons. Both the pleas put forth by the applicant were rightly disbelieved by the trial Court. With regard to the cheque issued by the respondents in a complaint under Section 138 of the Act, the trial Court rightly came to the conclusion that the question of friendly loan does not arise and there was no occasion for the respondents to have issued a cheque in favour of the complainant on 4.2.2013 as litigation between the parties was pending since the year 2007. Learned trial Court has rightly disbelieved the second plea put forth by the applicant that the cheque in question had been issued by the respondents to discharge loan liability of Surjit Kaur, as from the record it was established that no date, month of year of advancement of loan has been mentioned either in the legal notice, Exhibit C3 or in complaint or in affidavit Exhibit C.W.1/A tendered by the complainant in her examination-in-chief.

Their lordships of the Supreme Court in **Sudha Renukaiah and others vs State of UP, 2017(2) RCR (Criminal) 693,** held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

It has been held by a Division Bench of this Court in **Anil Kumar v. State of Punjab and others, CRA-D-531-DB of 2015,** while dealing with an appeal against acquittal, that order of acquittal interfered with only when there are compelling and substantial reasons for doing so i.e. when the order was clearly unreasonable. There were also no compelling and substantial reasons to interfere with the findings recorded by the trial Court and the trial Court has rightly taken into consideration all the material brought on record.

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755 and in Chandrappa v. State of Karnataka, (2007) 4 SCC 415.**

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

> “8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial

Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

In the facts and circumstances, the reasons recorded by the learned trial Court in acquitting the accused are just and proper and there is no merit in the criminal miscellaneous application seeking leave to appeal in terms of Section 378(4) of the Code Criminal Procedure, 1973. Accordingly, the criminal misc. application seeking leave to appeal is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

August 29 ,2017
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Whether speaking/reasoned: Yes/No

Whether Reportable:Yes/No