

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

CRM-A-371-MA-2014 (O&M)
Date of decision : 01.03.2017

Shri Sher Singh Malik

...Applicant-Appellant

Versus

M/s New Shiv Ganga Timbers and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present : Mr. Bhupender Singh, Advocate for the applicant-appellant.

None for the respondents.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal has been filed against the judgment dated 06.12.2013, passed by learned Judicial Magistrate 1st Class, Panipat whereby, the accused-respondent was acquitted of the charges framed against him under Section 138/141 of Negotiable Instrument Act, 1881 (for short 'the Act').

It is contended that the appellant had advanced a friendly loan amounting to Rs.2,00,000/- to the respondent and to discharge his liability for the same, the respondent issued cheque dated 15.03.2010 in favour of the appellant. However, on the presentation of the same, it was dishonoured by the bank with the remarks 'Insufficient Funds'. It is asserted that the 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 appellant, he secured the loan amount i.e. `2,00,000/- from one S.K. Chugh and handed over to the respondent. However, there is no evidence that said S.K. Chugh had the capacity to advance Rs.2,00,000/- or that amount allegedly given on loan to the appellant is shown in the Income Tax Return or in any other record maintained by said S.K. Chugh. To prove his version, the appellant has not even examined S.K. Chugh. In his cross-examination, the appellant had stated that he had given the loan amount to the respondent on interest. However, it has come on record that he does not hold any licence for money lending. Admittedly, no document was accepted by the appellant regarding advancing of loan or that respondent has furnished any security for repayment of amounting to Rs.2,00,000/- appears to be highly improbable.

Except self serving statement of the appellant there is no material evidence on record to prove the factum of legally enforceable debt of the respondent towards appellant. He has not led any oral or documentary evidence to prove the 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, Panipat, has passed the impugned judgment dated 06.12.2013, 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.

01.03.2017

ashok

(JITENDRA CHAUHAN)
JUDGE

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