

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

CRM-A-379-MA-2017 (O&M)

Date of decision : 15.05.2017

Vikas Arya

...Applicant-Appellant

Versus

Ajit Saini

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Kamal Chaudhary, Advocate
for the applicant-appellant

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 20.01.2017, passed by learned Judicial Magistrate 1st Class, Sirsa 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 applicant-appellant had advanced a loan amounting to Rs.9 lakh to the respondent and to discharge his liability respondent issued cheque dated 20.04.2011 in favour of the applicant-appellant. However, on presentation of the same, it was returned by the bank with the remarks 'Refer to drawer non availability of sufficient funds'. There is no dispute with regard to signature over the alleged cheque. In this way, the applicant-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.

As per the case of the applicant-appellant, he advanced a loan amounting to Rs.9 lakh to the respondent. However, there is no evidence on record that the applicant-appellant had the capacity to advance the said loan amount and he also failed to disclose the source of the same. Except the self serving statement of the applicant-appellant, there is no oral or documentary evidence to prove the factum of advancement of loan. Admittedly, no document was received by the applicant-appellant regarding advancing of loan and there is no explanation as to how such a huge amount was advanced to the accused-respondent without reducing into writing any document. The applicant-appellant did not mention the date, time and month of the advancement of loan. Moreover, the applicant-appellant has failed to explain as to why he received the cheque bearing seal of Vision International College, which as per resolution Ex.R1 requires the signatures of both, the respondent and his wife Seema Saini but it has been signed only by 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, Sirsa, has passed the impugned judgment dated 20.01.2017, after appreciating the entire facts and circumstances of the

present case and no other view is possible.

Accordingly the present special leave to appeal is declined.

Dismissed.

15.05.2017

ashok

(JITENDRA CHAUHAN)

JUDGE

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