

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

CRM-A-435-MA-2017 (O&M)

Date of decision : 15.05.2017

Haryana Tourism Corporation Ltd.

...Applicant-Appellant

Versus

Mahipal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present : Mr. Sat Narain Yadav, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal has been filed against the judgment dated 03.11.2016, passed by learned Judicial Magistrate 1st Class, Rewari whereby, the accused-respondent was acquitted of the charges framed against him under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short 'the Act').

It is contended that to discharge his legal liability, respondent issued cheque dated 20.11.2014 in favour of the applicant-appellant. On the presentation of the same, it was dishonoured by the bank with the remarks 'Funds Insufficient'. However, thereafter, the respondent had paid Rs.2 lakh. 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 Sections 138 and 142 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, 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.”*

In the instant case, in his cross-examination, CW3-Harvinder Singh had admitted that whenever they give oil on credit, they keep a blank signed cheque from that customer as security. On the other hand, the respondent stated that applicant-appellant has filed the present complaint as he stopped the business transactions with the applicant-appellant. Since it is the admitted fact that at the time of giving the oil on credit, applicant-appellant obtained blank signed cheque as security and the respondent has stopped the business transactions with the applicant-appellant, therefore, the possibility of false implication cannot be ruled out. Moreover, the applicant-appellant did not mention anything regarding the quantity of oil given on credit.

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, Rewari, has passed the impugned judgment dated 03.11.2016, 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