

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

CRM-A-606-MA-2015 (O&M)

Date of decision : 30.01.2017

Suresh Kumar

...Applicant-Appellant

Versus

Manjeet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Achin Gupta, Advocate
for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal has been filed against the judgment dated 05.02.2015, passed by learned Judicial Magistrate 1st Class, Bathinda whereby, the accused-respondent was acquitted of the charges framed against him under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act') read with Section 420 of the Indian Penal Code.

It is contended that the appellant had advanced a loan amounting to ₹95,000/- to the respondent and to discharge his liability for the same, the respondent issued cheque dated 15.11.2012 in favour of the appellant. However, on the presentation of the same, it was dishonoured by the bank with the remarks 'Funds Insufficient'. The appellant had mentioned the said transaction in his Income Tax Return. There is no dispute with regard to signature over the alleged cheque. It is asserted that in this

manner, 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.”*

In the instant case, as per the assertion of the appellant, the respondent had obtained a loan of ₹95,000/- and for making the payment of the same he had issued a cheque, which on presentation was dishonoured. Except the bald statement of the appellant, he has not led any oral or documentary evidence to prove the advancement of loan. Further, DW-Bharat Bhushan, Deputy Manager, SBOP, Branch Amrik Singh Road, Bathinda in his cross-examination stated that there is no house loan account of the appellant; that he is defaulter, notice under Section 13(2) SARFEASI Act has been issued to him and complaint under Section 138 of the Act is also pending against him.

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, Bathinda, has passed the impugned judgment dated 05.02.2015, 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.

30.01.2017

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No