IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-821-MA-2015 (O&M)
Date of decision : 01.05.2017

Anindya Nain ...Applicant-Appellant

Versus

Wazir Sharma ...Respondent

CRM-A-822-MA-2015 (O&M)

Anindya Nain ...Applicant-Appellant

Versus

Wazir Sharma ...Respondent

CRM-A-823-MA-2015 (O&M)

Anindya Nain ...Applicant-Appellant

Versus

Wazir Sharma ...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Harpreet Kaur, Advocate for
Mr. Amit Jain, Advocate
for the applicant-appellant(s).

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JITENDRA CHAUHAN, J. (Oral)

By this common judgment, this Court shall dispose of the aforesaid three special leave to appeals as common questions of facts and law are involved in these cases.

These special leave to appeals are directed against the impugned judgment dated 02.03.2015 passed by learned Judicial Magistrate 1st Class, Hisar whereby the accused-respondent was acquitted of the charges framed against him under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act').

The learned counsel contends that the trial Court acquitted the accused-respondent without appreciating the material facts on record. The alleged account payee cheques were issued by the respondent to discharge his liability against a friendly loan of Rs.10,70,000/-, which he had taken from the applicant-appellant and signature on the cheques in question is of the accused-respondent. However, on presentation of said cheques, they were returned by the bank with the remarks 'Funds Insufficient'. It is asserted that in this manner, the applicant-appellant has proved all the material ingredients to constitute an offence under Section 138 of the Act against the respondent.

Heard.

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."*

The case of the applicant-appellant is that he had advanced a friendly loan amounting to Rs.10,70,000/- to the respondent in the presence of sole witness, namely, Ratni Devi. Except the self serving statement of the applicant-appellant and one witness, Ratni Devi, there is no documentary evidence qua the said transaction. However, there are material contradictions in the statement of the applicant-appellant and said Ratni Devi. The foremost is that Ratni Devi had deposed that respondent was known to her through applicant-appellant, whereas the applicant-appellant had stated that respondent was known to him through Ratni Devi. Further, the applicant-appellant had stated that he knew the respondent for the last four years and later on, at the later part of his deposition it has come that he met the respondent for the first time at the house of Ratni Devi, a day before advancing the loan to the respondent. Even if it is assumed that the applicant-appellant did not know the respondent and he met him for the first time, even in that eventuality it is highly improbable that in the very first meeting, the applicant-appellant advanced such a huge amount to the respondent without any documentation and interest. Moreover, the applicant-appellant is unable to prove his financial capacity to lend such a huge amount. He has not mentioned the said transaction in his Income Tax Return. Admittedly, an FIR was lodged against the applicant-appellant and one, Sunil. The stand taken by the respondent regarding the issuance of cheques is that the applicant-appellant had approached him and stated that the matter in the said FIR is about to get compromised and the opposite party had demanded cheques towards guarantee. It was then that the respondent issued the blank signed cheques. This stand is duly corroborated by the testimony of DW2-Jagbir Singh, who deposed to the extent that the applicant-appellant and witness, Ratni Devi had come to the house of accused-respondent in his presence and asked for cheques as guarantee.

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.

Accordingly, the special leave to appeals are hereby dismissed.

01.05.2017 **(JITENDRA CHAUHAN)**
ashok **JUDGE**

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