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

**CRM-A-1921-2019 (O&M)
Date of Decision: 13.02.2020**

Lovenish Kumar

... Applicant/Appellant

Versus

Saloni Bhalla & Ors.

... Respondents

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ALKA SARIN**

**Present : Mr. Ithlesh Kaushik, Advocate, for
Mr. L.S. Sidhu, Advocate,
for the applicant/appellant.**

JITENDRA CHAUHAN.J.(ORAL)

This is application under Section 378(3) of Code of Criminal Procedure for grant of leave against the judgment of acquittal dated 18.08.2018, passed by Learned Judicial Magistrate, Ist Class, Gidderbaha, District Sri Muktsar Sahib, vide which the respondents were acquitted of the charges in Criminal Complaint Case No. 90 dated 22.12.2014/30.06.2016 filed under Sections 323, 420, 452, 467, 468, 471, 506 IPC and 138 of the Negotiable Instruments Act, 1881 at Police Station Gidderbaha, District Sri Muktsar Sahib.

Brief facts of the present case as noticed in paragraph No.2

of the impugned judgment are as under:-

“Briefly stated the facts of the present case that the family of the complainant and the accused had cordial relation. Accused No.1 took the cash loan of Rs.4,00,000/- from the complainant on interest at 2% per month. The accused issued two cheques bearing Nos. 116344 and 116345 amounting to Rs.4,00,000/- and Rs.42,670/- dated 27.09.2014. The cheques were duly signed by the accused. The cheques got dishonoured as is evident through memos dated 29.09.2014. The complainant issued legal notice through his counsel dated 14.10.2014 to the accused. That on 12.11.2014 both the accused came to the residential house of the complainant previously conniving with each other to cheat the complainant and asked the complainant that they both had come to repay the loan amount in cash and demanded the cheques in question from the complainant. As the accused were previously known to the complainant, the complainant keeping faith on the accused showed the cheque in question to the accused and demanded the cheque amount. It is worth mentioning here that Avinash kumar and Mukesh Kumar both residents of Gidderbaha were also present at the residence of the complainant. Accused No.2 suddenly tried to snatch the cheque from the possession of the complainant with motive to damage the instrument. The instruments were torn out and the complainant safely took out the possession of the instrument with great difficulty. At that time accused No.2 slapped the complainant and give a blow to cause hurt to the complainant and both the accused ran away from the house of the complainant. While running away the accused No.2 again threatened the complainant. The accused also threatened the complainant that if the complainant filed any complaint against them they would kidnap children of the complainant and kill them. The complaint regarding this fact is pending in the Police Station Gidderbaha till date no action has been taken.”

After appraisal of the evidence, the learned trial Court vide judgment dated 18.08.2018, acquitted the respondents of the charges framed against them.

Hence the instant application.

It is contended that the impugned judgment is against the facts and evidence on record. The learned trial Court has erred in holding that there is no evidence of torn cheques, the complaint filed by the complainant seeks to be surrounded by doubtful circumstances.

Heard.

This Court has perused the entire case file and finds that the Court below while acquitting the respondents of the charges, has carefully considered the facts and held that on carefully seeing the cheques in question, Exs.C1 and C2 do not at all seem to be subject to any mishandling, as contended by learned counsel for the complainant. It is further held that there is no correlating medical evidence of any causing of hurt on the file regarding the contention of learned counsel for the complainant that respondent No.2 gave a blow to cause hurt to the complainant.

It is further held that Ex.C-6 i.e the enquiry report relied upon by the complainant, in evidence, is the most important document on the file, which is against the case of the complainant himself as it is stated in the report that complainant in connivance with one Deepak Garg has misused the blank cheques bearing No.116344 and 116345 of the respondents. The said cheque numbers in previous complaint are different when compared with the cheques regarding which enquiry report is submitted.

In view of the above, learned trial Court has rightly held that complaint filed by the complainant seems to be surrounded by doubtful circumstances.

Even otherwise, 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.

Similarly, in '**Anil Kumar Gupta Vs. State of U.P., 2011 AIR(SC) (Criminal) 922**, Hon'ble the Supreme Court has held as under:-

*“8. Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant. It was submitted that the approach of the High Court is completely contrary to the decision of this Court in '**Ramesh Babulal Doshi v. State of Gujarat, 1996(3) R.C.R.(Criminal) 188 : (1996) 9 SCC 225**' which was followed by this Court in '**Dwarka Das & Ors. v. State of Haryana, 2002(4) R.C.R.(Criminal) 794 : (2003) 1 SCC 204**' The submission was that the High Court miserably failed to examine the reasons given by the trial Court for recording the order of acquittal.*

9. Learned counsel for the State of U.P. supported the impugned judgment mainly relying on the circumstances

that on that fateful night, the appellant alone was in the company of the deceased and it is one of the strong circumstances to hold that it is the appellant who administered poison to the deceased.

10. In Ramesh Babulal Doshi, this Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the en approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are pal ably wrote, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then- and then only- reappraise the evidence to arrive at its own conclusions".

11. In Dwarka Das, this Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of

acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice".

12. In Chandrappa & Ors. v. State of Karnataka, 2007(2) R.C.R.(Criminal) 92 : 2007(1) R.A.J. 841 : (2007) 4 SCC 415 this Court reappreciating the aforesaid principles, further observed that "in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point". Having stated so, this Court also held that an appellate Court has full power to reappreciate, review and reconsider the evidence upon which the order of acquittal is founded. But it is well established that if two views are possible on the basis of evidence on record and one favourable view to the accused has been taken by the trial Court, it ought not to be

disturbed by the appellate Court.”

Moreover, there is delay of 252 days in filing the instant application for leave to appeal. No cogent reasons have been put forth for condoning the delay.

In view of the above, the instant application is dismissed on the ground of delay as well as on merits.

Leave declined.

(JITENDRA CHAUHAN)
JUDGE

(ALKA SARIN)
JUDGE

13.02.2020

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No