

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

210

CRM-A-349-2019

Date of Decision : 14.11.2022

Rajnesh Kumar

..... Appellant

Versus

Jagat Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Vishwajeet, Advocate
for the appellant.

JAGMOHAN BANSAL, J. (Oral)

1. The appellant through instant application under Section 378(4) Cr.P.C. is seeking grant of special leave to appeal against order dated 27.11.2018 whereby learned Judicial Magistrate Ist Class, Indri has dismissed complaint of the appellant filed under Section 138 of Negotiable Instruments Act (for short, 'NI Act') and further acquitted the accused/respondent.

2. The brief facts emerging from record and arguments of learned counsel for the appellant are that the appellant lent a sum of Rs.1.85 lakhs to respondent for a period of one year and the money was lent on interest @ 1.25% per month. The respondent in discharge of his liability issued cheque bearing No.188924 dated 14.05.2015 of Rs.1.85 lakhs. The appellant presented the aforesaid cheque which came to be returned on account of "Insufficient Funds". The appellant in terms of Section 138 of the NI Act preferred a complaint before trial Court.

3. Learned trial Court acquitted the respondent on different counts. Learned trial Court has held that as per Exs. DI to D4, the respondent has deposited money on different dates in the account of Shyam Seeds Company, which is a partnership firm and present appellant is one of

the partners. The money was deposited in the account of Shyam Seeds Company by respondent, however, appellant during the course of proceedings before trial Court feigned his ignorance about the deposit of aforesaid amount. The appellant pleaded that a sum of Rs.1.85 lakhs was withdrawn from personal account and delivered to the respondent. There is no evidence in the form of writing disclosing lending of money by appellant to the respondent. The appellant during the course of trial pleaded that respondent had borrowed money as friendly loan and it was subject to interest @ 1.25%. The trial Court has found that as per complainant himself, the money lent was Rs.1.85 lakhs and the amount of cheque is Rs.1.85 lakhs. If the money was given as loan subject to interest @ 1.25% per month, it was not possible that amount of cheque would be same as was lent by complainant. Learned trial Court has further noticed that writing over the cheque qua signature and different columns is different. The appellant attempted to plead that there is no report of handwriting expert, however, learned trial Court has recorded a categorical finding that it was apparent that handwriting qua different columns vis-a-vis signatures over the cheque is different.

4. Learned counsel for the appellant submits that signatures of the respondent on cheque in question are not disputed still learned trial Court has dismissed complaint of the petitioner. The appellant was not supposed to prove his financial capability as well as proof of lending money. The respondent is not disputing his signatures and dishonour of cheque, thus, there was presumption in terms of Sections 138, 139 and 118 of Negotiable Instruments Act in favour of the petitioner/complainant, thus, trial Court has wrongly dismissed complaint of the appellant.

5. I have perused the record and heard arguments of the appellant. The present application seeking special leave to appeal is bereft of merit and deserves to be dismissed.

6. Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate court in dealing with an appeal against an order of acquittal has elucidated:

(i) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(ii) 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.

(iii) 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.

(iv) **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.

(v) 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.

7. The appellant is seeking special leave to appeal against judgment and order whereby trial court has acquitted the respondent. It is settled law that granting of special leave to appeal against acquittal is a discretionary power. However, such power has to be exercised judiciously and the Courts are not permitted to exercise the same at whims or fancies and arbitrarily. Arbitrariness has always been held anathema to exercise of any power.

8. In view of the above narrated facts, having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered opinion that in the case at hand there is no infirmity or irregularity in the impugned order whereby trial Court has acquitted the respondent. Accordingly, this Court fully agrees with the finding recorded by trial Court. The impugned judgment and order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference of this Court. Therefore, request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and consequently, appeal is dismissed.

14.11.2022
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>