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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-647-2020

Date of Decision: 15.11.2022

HARJINDER SINGH

..... Appellant

Versus

GURNAM SINGH

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. D.S. Kahlon, Advocate for the Appellant.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition is seeking setting aside of judgment and order dated 09.01.2020 passed by learned JMIC, Pathankot whereby learned Trial Court has dismissed complaint of the appellant filed under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') and further acquitted the accused/respondent.

2. The brief facts emerging from record and arguments of the learned counsel for the appellant are that the respondent in lieu of his liability handed over a cheque of Rs.3 lakhs bearing No.000080 dated 20.09.2016 drawn on HDFC Bank Ltd., Bhogpur Branch. The cheque was issued by respondent in lieu of the liability which arose on account of the fact that respondent alongwith few other persons got a sum of Rs.28 lakhs from the complainant/appellant with a promise to send grandsons of the appellant out of country. The appellant lodged FIR No.26 dated 08.04.2017 at Police Station Bhogpur, District Jalandhar under Sections 406 and 420 IPC against Bakshish Kaur, Satnam Singh and Gurnam Singh. Gurnam Singh and his wife Bakshish Kaur who are respondents herein were arrested and thereafter released on bail. The

appellant entered into a compromise with Gurnam Singh and Satnam Singh. The appellant executed an affidavit dated 12.06.2017 (Ex.D-1) wherein appellant *inter alia* deposed that he has already received a sum of Rs.12 lakhs from Gurnam Singh and Bakshish Kaur and he has no grievance against both of them. He further deposed that security cheque received by him shall be returned to the respondents, however, the appellant presented aforesaid cheque which came to be dishonored. The appellant preferred a complaint before Trial Court which came to be dismissed vide order dated 09.01.2020 passed by JMIC, Pathankot.

3. The findings recorded by learned JMIC, Pathankot are reproduced as below:

“13. In the present case, it is admitted fact that the accused and his partner Satnam Singh obtained Rs.20 lacs/- from the complainant and that later on the matter was compromised for Rs.24 lacs/-. Accordingly to Section 139 and 118 of NIACT, the burden to prove the fact that payment in respect of cheque in question is made by the accused, rest upon accused and that it shall be presumed that the cheque was issued in discharge of debt and for consideration. Therefore one thing is clear that on the day of presentation of cheque, the accused was under liability towards complainant. It being so, the accused is required to prove payment in order to evade liability in this case. As observed Supra in paragraph no.11, the accused can discharge this burden by way of cross examination of complainant or by leading other evidence. In the present case the accused cross examined the complainant at length and also relied upon document Ex.D1 i.e. affidavit of the complainant wherein the fact regarding receipt of

Rs.12 lacs/- by the complainant from the accused is admitted by the complainant. It is pertinent to mention here that complainant while deposing as CW1 admitted his signature over Ex.D1 and also admitted the contents of this document. Once the execution and contents are admitted by a party to litigation, the said document can be used against him. On perusal of Ex.D1, it came to light that as per para no.6 and 7 of Ex.D1, complainant stated on solemn affirmation that accused Gurnam Singh has paid his share of Rs.12 lacs/- and that the complainant do not want to take any legal action against Gurnam Singh and Bakshish Kaur. It is further apparent from para no.8 to Ex.D1 that complainant undertakes to return the security cheques issued by accused Gurnam Singh.

14. Meaning thereby, the complainant admitted the fact that the accused had paid him his share of liability on or before 12.06.2017 i.e. the date of execution of affidavit Ex.D1. It is further observed that although the present complaint was filed on 31.07.2017 yet the accused appeared for the first time in this case on 07.07.2018. It being so, the accused had discharged his liability towards the cheque in question before putting in appearance and before service of notice of accusation. Once the complainant has received from accused Gurnam Singh his entire share of liability, it is required for the complainant to withdraw the present complaint. But the complainant continued with the present complaint for the reasons best known to him.

15. So in view of above discussion, this court is of the considered view that the accused is able to prove that he discharged his liability regarding the cheque

in question. So, points of determination are decided against the complainant and in favour of accused. Therefore, accused Gurnam Singh S/o Balbir Singh is hereby acquitted of the notice of accusation under Section 138 of the said Act. His bail bond/surety bonds stands discharge. File after due compliance be consigned to the Record Room.”

4. Learned counsel for the appellant assailing the order passed by learned JMIC, Pathankot submits that Satnam Singh and Gurnam Singh were acting jointly and they had promised to pay a sum of Rs.24 lakhs whereas they had paid pay a sum of Rs.12 lakhs, thus, they have resiled from their statements and accordingly cheque was presented which came to be dishonored. There was legally enforceable liability against the respondents, thus, Trial Court has wrongly dismissed the complaint of the appellant. There existed a legally enforceable debt against the accused, however, learned trial Court has wrongly recorded finding that cheque was not issued in discharge of legally enforceable debt/liability.

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. A two Judge Bench of Hon'ble Supreme Court in Criminal Appeal No.1497 of 2022 titled as 'Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and another' vide judgment dated 11.10.2022 while relying upon its earlier judgment in 'Indus Airways Private Limited Vs. Magnum Aviation Private Limited' and 'Sunil Todi Vs. State of Gujarat' has held that rigor of Section 138 can be invoked if there is legally enforceable debt or liability and cheque must be issued in discharge of whole or part legally enforceable liability.

9. In the present case, the appellant inspite of his affidavit confirming receipt of Rs.12 lakhs from respondents presented cheque which he was supposed to return.

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.

(JAGMOHAN BANSAL)
JUDGE

15.11.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No