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

204 CRM-A-2485-MA-2018
Date of Decision: 11.11.2022

Rattan Sharma .... Appellant

Versus

Jitender Tripathi .... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Rajesh Bansal, Advocate
for the appellant.

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<u>JAGMOHAN BANSAL, J. (Oral)</u>

1. The appellant through instant application under Section 378(4) Cr.P.C. is seeking grant of special leave to appeal against order dated 12.09.2018 whereby learned Judicial Magistrate Ist Class, Panipat 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.5 lakhs in cash to the complainant who in turn issued a cheque bearing No.414287 dated 16.02.2016 of Rs.4,00,000/- drawn on Karnataka Bank Ltd., Chandni Chowk, Delhi. The cheque was presented for encashment which came to be returned on account of "Insufficient Funds" and "Drawer's signature differs from specimen filed in this office".

3. The appellant in terms of Section 138 of the NI Act preferred a complaint before trial Court. The complaint of the appellant came up for consideration before learned Judicial Magistrate Ist Class, Panipat who vide

order dated 12.09.2018 dismissed the complaint of the appellant and acquitted the respondent.

4. Learned trial Court acquitted the respondent on different counts. Learned trial Court has held that even if income tax return Ex.C-11 and account statement Ex.C-14 of appellant are believed to be true still appellant could not adduce evidence regarding his paying capacity for total amount which he allegedly that he paid to the accused. Learned trial Court has further held that appellant had placed no document on record to prove his income from the rice trading which creates the doubt in the version of the complainant. Learned trial Court has also held that different pen had been used to sign the cheque and fill other particulars which create doubt in issuance of cheque. No document at the time of payment of Rs.5 lakhs in cash was executed.

5. Counsel for the appellant primarily contended that trial Court could not look into financial capacity of the appellant as respondent in reply to legal notice did not raise question of financial capacity of the appellant, thus, trial Court travelling beyond the pleadings has recorded the findings that appellant was not having financial capacity to lend a sum of Rs.5 lakhs. Second line of argument of the appellant is that signatures of respondent are not disputed, thus, there was presumption of drawing of cheque and legally enforceable liability against the respondent. The case of the appellant is squarely covered by presumption enshrined under Sections 138, 139 read with Section 118 of the NI Act. In terms of mandate of Section 138 and other provisions of NI Act, proper notice was served upon the respondent and thereafter well within time, complaint was filed before learned trial Court. The respondent did not raise question of financial capacity in reply

to legal notice served upon him. The respondent did not dispute the signatures on the cheque even though he questioned other particulars mentioned in the body of the cheque i.e. name of the cheque holder, amount and date.

6. 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.

7. 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, reappreciate 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.

8. 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.

9. 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.

10. In the case in hand, the financial capacity of the appellant to pay Rs.5 lakhs was doubtful, the entire payment was made in cash, Section

269 SS of Income Tax Act prohibits acceptance of deposit/loan in cash in excess of Rs.20,000/, different pen was used to sign and fill coloumns of cheque and no document was executed at the time of alleged payment of Rs.5 lakhs in cash. 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

11.11.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*