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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2550-MA-2018
Date of Decision: 21.12.2022

DHEERAJ KUMAR

…Applicant

Versus

DESH RAJ

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Harsh Aggarwal, Advocate
for the applicant.

HARSH BUNGER, J.

Applicant-Dheeraj Kumar has filed this application under Section 378(4) of the Code of Criminal Procedure, 1973, seeking leave to file appeal against the judgment dated 20.08.2018 passed by learned Judicial Magistrate Ist Class, Rewari, vide which, the respondent-accused was acquitted.

It is mainly stated in the application that the trial Court has wrongly given the benefit of doubt and discharged the accused. It is, therefore, prayed that leave to file appeal may be granted.

As per record, applicant-complainant (Dheeraj Kumar) filed a complaint under Section 138 of the Negotiable Instruments Act against respondent-accused (Desh Raj). As per the complainant's version, the respondent-accused borrowed a sum of Rs.3,50,000/-from the applicant-complainant on account of friendly loan and in order to discharge his liability, the respondent-accused issued a Cheque bearing No.265985 dated 29.02.2016 for a sum of Rs.3,50,000/- drawn on `IDBI Bank' from account

No.0405000105488744 in favour of the applicant-complainant, which on presentation for encashment, was returned back dishonoured vide memo dated 02.03.2016 with the remarks “funds insufficient”. Thereafter, the applicant-complainant served a legal notice, which is stated to have been replied by the respondent-accused on 21.04.2016. When the cheque amount was not paid, then the applicant-complainant filed the aforesaid complaint under Section 138 of the Negotiable Instruments Act within time.

In the preliminary evidence, applicant-complainant (Dheeraj Kumar) examined himself as CW1 and deposed through an affidavit (Ex. CW1/A). He further tendered documents i.e. Cheque (Ex.CW1/B), Memo (Ex.CW1/C), Legal Notice (Ex.CW1/D), Postal Receipt (Ex.CW1/E) and closed the preliminary evidence. Thereafter, the Court took cognizance of the complaint and summoned the respondent-accused to face trial. After appearance of the respondent-accused and finding an offence punishable under Section 138 of the Negotiable Instruments Act made out against the respondent-accused, notice of accusation was served on the respondent-accused on 15.07.2016, to which the respondent-accused pleaded not guilty and claimed trial.

In order to prove his case, the applicant-complainant examined himself as CW1 and proved the afore-stated documents. He further examined CW2-Saurabh Singh, Manager IDBI Bank (who proved the statement of account Ex.PW2/A and Ex.PW2/B) and PW-3 Tej Ram, who proved the statement Ex.PW3/A. Thereafter, the applicant-complainant closed the evidence.

Statement of the respondent-accused was recorded under Section 313 of the Code of Criminal Procedure, wherein, he denied all the allegations leveled against him.

In defence, respondent-accused himself stepped into the witness box as DW1 and deposed through an affidavit Ex.DW1/A and denied having taken loan from the applicant-complainant. The entire story put up by the applicant-complainant was stated to be baseless and the liability was also denied. The respondent-accused tendered documents Ex.D2 to Ex.D6 and closed the evidence.

Learned Judicial Magistrate Ist Class, Rewari, after appreciating the evidence, dismissed the complaint under Section 138 of the Negotiable Instruments Act and acquitted the respondent-accused vide judgment dated 20.08.2018.

Aggrieved with the above-said judgment dated 20.08.2018, the present application under Section 378(4) of the Code of Criminal Procedure, 1973, seeking grant of leave to file appeal along with appeal has been filed.

I have heard learned counsel for the applicant and have gone through the paper-book with his able assistance.

The perusal of the judgment passed by learned Judicial Magistrate Ist Class, shows that findings have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below, while endorsing its findings.

From the perusal of record, I find that the applicant-complainant had filed a complaint on the plea that the respondent-accused had borrowed Rs.3,50,000/- from him as a friendly loan while assuring that the said amount will be re-paid. On the other hand, the respondent-accused had taken a specific defence that he never took any loan from the applicant-complainant. It is the case of the respondent-accused that he and the applicant-complainant used to work at PLCL, where blank cheques of both parties remained there and the cheque in question has been misused. The respondent-accused had placed reliance upon a writing Ex.D1 and the complainant was confronted with the said writing. The applicant-complainant has duly admitted his signatures on Ex.D1. The said writing Ex.D1 is dated 02.06.2015 and the trial Court has observed that the perusal of Ex.D1 reveals that the applicant-complainant on 02.06.2015 has agreed between three persons with regard to money and that now, he will not go to the house of Desh Raj (respondent-accused) for money. As per the trial Court, the said writing was duly proved on the file. Accordingly, it was upon the applicant-complainant to explain the circumstances, in which, the writing Ex.D1 was executed. Learned trial Court has observed that according to Ex.D1, the matter has been compromised between the applicant-complainant and respondent-accused regarding money on 02.06.2015 and the cheque in question, is dated 29.02.2016.

From the perusal of judgment passed by the learned trial Court and also the material available on the file would show that the applicant-complainant has not disclosed as to on which date, the alleged amount of Rs.3,50,000/- was taken as loan by the respondent-accused. In the afore-stated circumstances, the date of borrowing was very much relevant to prove that there was a legally existing debt or liability and onus of the same was on the complainant, especially in the light of the fact that Ex.D1 has been proved by the respondent-accused.

It is interesting to note that incase, the cheque in question was issued prior to the writing Ex.D1 then as per the findings recorded by the learned trial Court, Ex.D1 apparently is a compromise between the parties. If cheque in question is regarding some other transaction then Ex.D1 would definitely be reflective of something that there is another transaction for which Ex.D1 is not binding between parties. Therefore, the learned trial Court has rightly recorded that the cheque in question, was not proved to be issued for any existing legal debt or liability.

In ***Mrinal Das and others vs State of Tripura 2011(9) SCC 479***, the Hon'ble Apex Court, after looking into various judgments has laid down parameters in which interference can be made in a judgment of acquittal, by observing as under :-

> *"8. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The*

presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and the respondent-accused has been rightly acquitted. In no manner, the impugned judgment can be held to be perverse or against the evidence. There are no compelling and substantial reasons to interfere with the judgment of acquittal passed by the trial Court.

In view of the above discussion, the impugned judgment dated

20.08.2018 passed by learned Judicial Magistrate Ist Class, Rewari, does not call for any interference by this Court. Accordingly, the same is upheld. No ground is made out for grant of leave to file appeal and therefore, the application stands dismissed.

December 21, 2022 **(HARSH BUNGER)**
gurpreet **JUDGE**

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