

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208 (6 cases)

CRM-A-140-MA-2014 (O&M)
Date of Decision : 14.11.2022

Liyakat Ali Appellant

Versus

Akbar Respondent

2. CRM-A-146-MA-2014 (O&M)

Liyakat Ali Appellant

Versus

Akbar Respondent

3. CRM-A-147-MA-2014 (O&M)

Liyakat Ali Appellant

Versus

Akbar Respondent

4. CRM-A-148-MA-2014 (O&M)

Liyakat Ali Appellant

Versus

Akbar Respondent

5. CRM-A-151-MA-2014 (O&M)

Liyakat Ali Appellant

Versus

Akbar Respondent

6. CRM-A-149-MA-2014 (O&M)

Liyakat Ali Appellant

Versus

Akbar Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Arun Singal, Advocate
for the appellant.

None for the respondent.

JAGMOHAN BANSAL, J. (Oral)

By this common order, six above-mentioned appeals are disposed of because all the appeals are between the same parties and common issues are involved. The facts are borrowed from CRM-A-140-MA-2014.

1. The appellant through instant application under Section 378(4) Cr.P.C. is seeking grant of special leave to appeal against order dated 18.02.2013 whereby learned Chief Judicial Magistrate, Nuh at Mewat has dismissed the complaint of the appellant filed under Section 138 of Negotiable Instruments Act (for short, 'NI Act') and sections 420 and 406

IPC and further acquitted the accused/ respondent.

2. The brief facts emerging from the record and arguments of learned counsel for the appellant are that the appellant lent a sum of Rs.3 lakhs in cash to the respondent and in discharge of his liability, the respondent issued 6 different cheques. The appellant presented all the cheques on different dates which came to be returned on account of “Insufficient Funds”. The appellant in terms of Section 138 of the NI Act preferred six complaints before trial Court. The detail of cheques and complaints filed before trial Court is as below :

Sr. No.	Cheque No. & date	Complaint No. & date
1.	039378/05.09.2003	005/2004/2012/06.01.2004
2.	039371/19.08.2003	06 of 2004/06.01.2004
3.	037709/05.07.2003	003/2004/2012/06.01.2004
4.	039376/10.08.2003	008/2004/2012/06.01.2004
5.	037710/30.07.2003	007/2004/2012/06.01.2004
6.	239377/20.08.2003	004/2004/2012/03.01.2004

3. The complaint of the appellant came up for consideration before learned Chief Judicial Magistrate, Nuh at Mewat who vide order dated 18.02.2013 dismissed complaint of the appellant and acquitted the respondent.

4. Learned trial Court has dismissed complaint on the ground that appellant has failed to disclose source of Rs.3 lakhs which he has pleaded to lend to the respondent. The appellant contended before trial Court that he has sold car, jewellery and crop to realize Rs.3 lakhs and the said amount was lent to the respondent. Learned trial Court has noticed that as per Section 269 SS of Income Tax Act, no person can accept deposit or loan beyond a sum of Rs.20,000/- in cash. The appellant has pleaded that he sold car, jewellery and crop whereas he did not lead any evidence in support of his contention. In this way, learned trial Court has dismissed complaint on

the ground that appellant has failed to prove source of Rs.3 lakhs which he allegedly lent to the respondent.

5. Learned counsel for the appellant contended that appellant was not supposed to disclose source of money lent to the respondent. The signatures of the respondent over cheque are undisputed, thus, there was presumption of legally enforceable liability against the respondent and in favour of the appellant. The trial Court has mechanically dismissed complaint of the appellant.

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, 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.

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 payment was allegedly made in cash in violation of Section 269 SS of Income Tax Act; the petitioner failed to prove his financial capacity to lend Rs.3 lakhs. 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 Tried Court. The impugned judgment and order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs to interference. Therefore, request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and appeal stand dismissed.

(JAGMOHAN BANSAL)
JUDGE

14.11.2022
anju

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