

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

CRM-A-591-MA-2018 (O&M)

Date of decision : 12.10.2022

Hari Dass

..... Applicant

versus

Malkit Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Bhupinder Singh Bairagi, Advocate
for the applicant.

PANKAJ JAIN, J. (Oral)

CRM-9099-2018

This is an application for condonation of delay of 127 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 127 days in filing the appeal is condoned.

Main case

By way of present application, the complainant seeks leave to appeal against the order of acquittal passed by the trial Court dated 18.08.2017. The applicant preferred complaint under Section 138/142 of the Negotiable Instruments Act, 1881 (for short 'N.I.' Act) against the respondent. It was claimed that the accused borrowed a sum of Rs.2 lakhs for his personal use and in order to discharge said debt, accused issued a cheque No.535410 dated 26.03.2013 for a sum of Rs.2 lakhs drawn on Punjab and Sind Bank, Shahbad Markanda, District Kurukshetra. The aforesaid cheque was dishonoured by the banker with the remarks 'funds insufficient'. After serving statutory notice upon the accused, present complaint was preferred.

2. After trial, the Court found that the statutory presumption as contemplated under Section 139 of the N.I. Act stands rebutted by the testimony of the complainant. In his cross examination, complainant deposed as under:-

- “i) On 26.03.2013 I was having no munim at my commission agent shop, which is in name of 'Bawa Brothers'. The work of munim was done by me at shop.
- ii) In the year 2005 the commission agent shop was having No.159 in New Grain Market, Shahabad and in the year 2007, the number was 41.
- iii) The accused was my client for 4/5 years up to 2009. After 2009 there was no transaction between us.
- iv) The limit of my shop is with Oriental Bank of Commerce and every transaction by me in writing.
- v) I have no writing regarding the giving of Rs.2,00,000/- to accused Malkeet Singh.
- vi) I have no entry in my record regarding giving of loan to accused Malkeet Singh.”

3. Counsel for the applicant submits that once the accused admitted his signatures on the cheque leaf, the trial Court ought to have held accused guilty of offence punishable under section 138 of the N.I. Act and thus it erred in dismissing the complaint. He relies upon law laid down by Apex Court in '*Tedhi Singh vs. Narayan Dass Mahant*' reported as **2022 (6) SCC 735**.

4. I have heard counsel for the applicant and have gone through the records of the case.

5. There cannot be any dispute with law laid down by Apex Court in Tedhi Singh's case (supra) w.r.t. statutory presumption as contemplated under Section 139 of the Act. However, as held by the Apex Court in the case of '*Rangappa vs. Mohan*' reported as **2010 (11) SCC 441**, the statutory presumption under Section 139 of the N.I. Act, like any other presumption under law is rebuttal.

6. Further the accused is not required to lead evidence to rebut the presumption, but can definitely call upon the evidence lead by the complainant. Moreover, the scope of the appeal also stands culled out by the Apex Court in ***Chandrappa and ors. V. State of Karnataka, 2007 (2) RCR (Criminal) 92*** wherein it was held that :-

“(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) 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;

(3) 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 emphasize 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.

(4) 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.

(5) 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. Keeping in view the aforesaid settled proposition of law and the facts leading to the present case especially the testimony of the complainant himself, no fault can be found with the findings recorded by

the trial Court. Consequently, the present application seeking leave to appeal is dismissed.

8. Since the main case has been decided, pending miscellaneous application, if any, stands disposed off.

(PANKAJ JAIN)
JUDGE

12.10.2022
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No