IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1641-MA-2014
Date of decision: 12.12.2022

M/s Radhe Radhe Trading Company
...Applicant

Versus

M/s Yamuna Traders
...Respondent

CORAM: HON'BLE MR.JUSTICE AMAN CHAUDHARY

Present: Mr.Gaurav Chopra, Sr Advocate with
Mr Anurag Chopra Advocate, for the applicant

None for the respondent

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Aman Chaudhary, J.

The present application for grant of leave to appeal has been filed against the judgment dated 10.09.2014, passed by the learned Judicial Magistrate, 1st Class, Ambala whereby, the accused-respondent was acquitted in the complaint filed against it under the Negotiable Instruments Act, 1881 wherein it had been summoned.

Briefly put, the accused-respondent raised a loan for financial help from the complainant-applicant in the month of December, 2011 for a sum of Rs.86000/- with a promise to return the same within one month alongwith interest @ 18% per annum. After the stipulated period, the complainant-applicant demanded the money, upon which, the accused-respondent issued a cheque on 19.01.2012 for a sum of Rs.86,000/-. On presentation of the said cheque in his bank by the complainant-applicant, it got dishonoured vide memo dated 11.2.2012, with remarks "insufficient funds" Thereafter, the complainant-applicant served a legal notice dated 6.3.2012, despite which the accused-respondent failed to make the payment. Hence, the complaint in question was filed. On leading preliminary evidence, the accused-respondent was summoned to face the trial for the offence punishable under Section 138 of the NI Act. Notice of accusation upon the accused-respondent was served to which, it pleaded not guilty and claimed trial.

To prove its case, the complainant through its proprietor/ partner stepped into the witness box as CW1. He tendered documents Ex.C1, cheque in question, Exs.C2 and C3, bank memos, Ex.C4, Postal receipt and Ex.C5, legal notice. Thereafter, statement of the petitioner under Section 313 of the Code of Criminal Procedure was recorded, wherein proprietor/partner stated that no amount has been borrowed from the complainant and the cheque in question, Ex.C1, was given as security, which has been misused by the complainant-firm. In defence, she examined DW1 Ramesh Kumar, DW2 Balwant Singh.

After hearing the learned counsel for the complainant; the learned defence counsel and examining the evidence on the record, the learned trial Court acquitted the respondent.

Learned counsel for the complainant-applicant would contend that the learned trial Court had committed an error by ignoring the evidence on record and wrongly acquitting the accused-respondent, especially when it is an admitted fact that the cheque bears the signatures of the accused-respondent, thus there is no ground available to deny the liability to discharge the enforceable debt. The respondent had failed to explain the circumstances under which the cheque was handed over to the complainant-applicant. The requirements of Section 138 of NI Act regarding presentation of cheque, serving of the statutory legal notice and thereafter non-payment of receipt of the notice, were satisfactorily fulfilled.

Heard and perused the case file.

It is at first apposite to refer to the judgment of Hon'ble The Supreme Court of India in the case of **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra 2011 (1) RCR (Criminal) 57,** wherein it has been held as under:-

> **"Appeal against Acquittal:**
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> 22. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.
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> 23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and

gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: **Balak Ram & Anr**. **v. State of U.P.,** AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P**., AIR 2003 SC 1104; **Budh Singh & Ors. v. State of U.P**., AIR 2006 SC 2500; **S. Rama Krishna** v. **S. Rami Reddy** (D) by his LRs. **& Ors.,** AIR 2008 SC 2066; **Arulvelu & Anr. v. State,** (2009) 10 SCC 206; **Ram Singh** alias Chhaju **v. State of Himachal Pradesh,** (2010) 2 SCC 445); and **Babu v. State of Kerala,** (2010) 9 SCC 189)."

Now adverting to that the case in hand, learned trial Court while acquitting the respondent has recorded a finding that the alleged money transaction dated 23.12.2011 made by way of loan, is not supported by documentary evidence, there being no evidence of any acknowledgement to show that the amount was advanced as loan. Therefore, it was shrouded by suspicious circumstances, both parties being business firms. The learned trial Court has recorded a categoric finding that the onus was upon the complainant to prove that on the date of presentation of the cheque, there existed a legal enforceable liability/debt against the accused but in this regard, no evidence was led by him. From the close reading of the impugned judgment, no other view is possible. There is not even an iota of evidence against the present respondent, which could make out a prima facie case against him.

In view of the foregoing facts and circumstances as they stand and the laid down as referred to hereinabove, this Court finds no illegality or perversity in the impugned judgment passed by the learned trial Court warranting any interference. As such, the present application seeking leave to appeal is hereby dismissed.

12.12.2022 **(AMAN CHAUDHARY)**
gsv **JUDGE**

Whether speaking / reasoned? Yes / No
Whether reportable? Yes / No