

(234) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-580-MA-2020(O&M)
Date of Decision: 25.04.2022

Parmod Kumar

... Appellant

Versus

Som Dutt

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Abhimanyu Singh, Advocate
for the appellant.

JASJIT SINGH BEDI, J.

The applicant/appellant has filed the present application for leave to appeal against the order of acquittal dated 18.12.2019 passed by Judicial Magistrate, Ist Class, Bhiwani, whereby the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the applicant/appellant was dismissed.

2. The brief facts of the case are that in the month of April, 2016, the complainant advanced a friendly loan of Rs.3,00,000/- to the accused for his personal requirements. The accused person promised to return the amount within 2/3 months.

3. In order to discharge his liability, accused issued a cheque bearing No.390196 dated 16.07.2016 amounting to Rs.3,00,000/- in the name of Punjab National Bank, Halu Bazar, Bhiwani. The cheque when presented to the Bank of Baroda was returned unpaid with memo dated 18.07.2016 by the office of Punjab National Bank, with the remarks that "Insufficient Funds".

4. The complainant led preliminary evidence and closed the same on 30.08.2016 who tendered his affidavit Ex.CW1/A reiterating the averments of the complaint and proved the following documents in his documentary evidence:-

S. No.	Exhibits	Documents
1	Ex.C1	Original cheque bearing No.390196 dated 16.07.2016
2	Ex.C2	Deposit Slip
3	Ex.C3	Memorandum dated 18.07.2016
4	Ex C4	Return memo dated 18.07.2016
5	Ex C5	Legal notice dated 03.08.2016
6	Ex C6	Postal receipt dated 04.08.2016
7	Ex C7	Acknowledgment

5. On the basis of the preliminary evidence, the learned Trial Court after finding sufficient grounds vide order dated 30.08.2016, summoned the accused to face trial for the commission of offence punishable under Section 138 of Negotiable Instruments Act.

6. Thereafter, complaint Sh. Parmod Kumar was present and examined as CW1. He proved on record his affidavit Ex.CW1/A. Vide separate recorded statement complainant closed his evidence on 13.12.2018.

7. Statement of accused under Sections 313 Cr.P.C. recorded.

8. In defence evidence, Sh.Anil Kumar, Criminal Ahlmad was present and examined as DW1. He proved on record Ex.D5 to Ex.D14.

Sh. Yashpal Chand Jain, Handwriting Expert was present and examined as DW2. He proved on record his affidavit Ex.DW2/A, report Ex.DW2/B and photographs Ex.DW2/C.

9. Thereafter, vide a separate recorded statement the accused closed his defence evidence after tendering documents Ex.D1 to Ex.D4, Ex.D15 and Ex.D16. Thereafter, the defence evidence was closed by Court order.

10. It was argued by the learned counsel for the accused that in fact the cheque in question had been misused by the accused in order to evade his liability for a payment of Rs.12 lakhs, which the complainant had borrowed from the relative of the accused-respondent. It was contended that the act and conduct of the complainant was apparent from his denial qua the business transaction of goods between the complainant and the accused, wherein, the accused had deposited money for purchase of material through RTGS in the account of the complainant. In fact a blank signed cheque available with the complainant had been misused by the complainant without the existence of any legally enforceable debt and that the handwriting expert DW-2 had opined that the body of the cheque in question had been filled up by the complainant himself. The cheque in question seemed to be a security cheque without any evidence of the debt being alive on the date when the cheque was presented.

11. After hearing the counsel for the parties and examining the record, the Court came to the conclusion that the complainant himself had admitted the execution of a document Ex.D-2 vide which he had borrowed a sum of Rs.12 lakhs on 22.12.2013 from the relative of the accused to be repaid within 36 months i.e. upto 22.12.2016 and therefore, it could be safely inferred that the complainant lacked the financial capacity to advance the loan of Rs.3 lakhs to the accused, when he himself was borrowing money from the relative of the accused.

12. Keeping in view the aforesaid facts, the Trial Court came to the conclusion that the defence of the accused seemed more probable and was sufficient to dislodge the case of the complainant leading to the passing of the judgment of acquittal dated 18.12.2019.

13. The learned counsel for the appellant has argued that once the signature on the cheque was admitted, a presumption arose under Section 118-A of the Negotiable Instruments Act that the said cheque was issued for the discharge of a legally enforceable debt and the accused had not been able to rebut the presumption and therefore the judgment of acquittal was liable to be set aside. He further contended that the respondent-accused was a routine offender under the Negotiable Instruments Act and had been earlier convicted for a period of 2 years which also establish his culpability.

14. I have heard the learned counsel for the parties.

15. Before proceeding in the matter, it would be necessary to examine the relevant provisions of the Negotiable Instruments Act.

Section 118A of the Negotiable Instruments Act, reads as under:-

“118. Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;”

Section 139 of the Negotiable Instruments Act, reads as under:-

“139. Presumption in favour of holder.—

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.”

16. The Hon'ble Supreme Court in “M.S. Narayana Menon @ Mani Versus State of Kerala, 2006(3) R.C.R (Criminal) 504”, while dealing with the issue of statutory presumptions and rebuttal thereof held as under:-

“29. Presumptions both under Sections 118(a) and 139 of the Act are rebuttable in nature.

30. What would be the effect of the expressions 'May Presume', 'Shall Presume' and 'Conclusive Proof' has been considered by this Court in Union of India (UOI) v. Pramod Gupta (D) by L.Rs. and Ors., 2005(4) RCR (Civil) 235” [(2005) 12 SCC 1] in the following terms:

*“...It is true that the legislature used two different phraseologies "shall be presumed" and "may be presumed" in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards the right to mines and minerals said to be vested in the Government vis- a-vis the absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words "shall presume" would be conclusive. **The meaning of the expressions "may presume" and "shall presume" have been explained in Section 4 of the Evidence Act, 1872, from a perusal whereof it would be evident that whenever it is directed that the court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression "shall presume" cannot be held to be synonymous with "conclusive proof".***

31. In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words 'proved' and 'disproved' have been defined in Section 3 of the Evidence Act (the interpretation clause) to mean: -

"Proved- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

Disproved- A fact is said to be disproved when, after considering the matters before it the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

32. Applying the said definitions of 'proved' or 'disproved' to principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

33. A Division Bench of this Court in Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal 1999(2) RCR (Civil) 615: [(1999) 3 SCC 35] albeit in a civil case laid down the law in the following terms:

*"Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. **The burden upon the defendant of proving the non- existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt"**.*

34. This Court, therefore, clearly opined that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence.

35. The standard of proof evidently is pre-ponderance of probabilities. Inference of pre-ponderance of probabilities

can be drawn not only from the materials on records but also by reference to the circumstances upon which he relies.

42. A presumption is a legal or factual assumption drawn from the existence of certain facts.

43. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, at page 3697, the term 'presumption' has been defined as under:

"A presumption is an inference as to the existence of a fact not actually known arising from its connection with another which is known.

A presumption is a conclusion drawn from the proof of facts or circumstances and stands as establishing facts until overcome by contrary proof.

A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is no direct proof. It follows, therefore that a presumption of any fact is an inference of that fact from others that are known". (per ABBOTT, C.J., R. v. Burdett, 4 B. & Ald, 161).

The word 'Presumption' inherently imports an act of reasoning- a conclusion of the judgment; and it is applied to denote such facts or moral phenomena, as from experience we known to be invariably, or commonly, connected with some other related facts. (Wills on Circumstantial Evidence).

A presumption is a probable inference which common sense draws from circumstances usually occurring in such cases. The slightest presumption is of the nature of probability, and there are almost infinite shades from slight probability to the highest moral certainty. A presumption, strictly speaking, results from a previously

known and ascertained connection between the presumed fact and the fact from which the inference is made."

44. Having noticed the effect of presumption which was required to be raised in terms of Section 118(a) of the Act, we may also notice a decision of this Court in regard to 'presumption' under Section 139 thereof.

45. In Hiten P. Dalal v. Bratindranath Banerjee, 2001(3) RCR (Criminal) 460: [(2001) 6 SCC 16], a 3- Judge Bench of this Court held that although by reason of Sections 138 and 139 of the Act, the presumption of law as distinguished from presumption of fact is drawn, the court has no other option but to draw the same in every case where the factual basis of raising the presumption is established. Pal, J. speaking for a 3-Judge Bench, however, opined:

"..Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when,

"after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the

circumstances of the particular case, to act upon the supposition that it exists".

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man"."

46. The court, however, in the fact situation obtaining therein, was not required to go into the question as to whether an accused can discharge the onus placed on him even from the materials brought on records by the complainant himself. Evidently in law he is entitled to do so.

47. In Goaplast (P) Ltd. v. Chico Ursula D'Souza and Another [(2003) 3 SCC 232], upon which reliance was placed by the learned counsel, this Court held that the presumption arising under Section 139 of the Act can be rebutted by adducing evidence and the burden of proof is on the person who want to rebut the presumption. The question which arose for consideration therein was as to whether closure of accounts or stoppage of payment is sufficient defence to escape from the penal liability under Section 138 of the Act. The answer to the question was rendered in the negative. Such a question does not arise in the instant case.

48. In Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 SC 1316], Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether burden of proof in terms of Section 118 had been discharged or not, relevant evidence cannot be permitted to be withheld. If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced might have gone unfavourable to the plaintiff. Such a presumption was itself

held to be sufficient to rebut the presumption arising under Section 118 of the Act stating:

"Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

[Emphasis supplied]

17. A perusal of the aforementioned judgment would show that the presumption under Sections 118A and 139 of the Negotiable Instruments Act are rebuttable in nature. The presumption can be rebutted by raising a probable defence for the said purpose the evidence of the complainant can be ruled on. Thus, the burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. Therefore, the rebuttable does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of a prudent man. For this purpose, the cross-examination of the accused can also be taken into consideration for the purposes of rebuttable.

In the present case, the adverse inferences that can be drawn against the complainant are firstly that he has denied the existence of a business relationship between himself and the accused, despite the existence of such a relationship and secondly, the fact that he is said to have advanced a loan to the accused, despite the fact that he himself had borrowed money

from a relative of the accused to the extent of Rs.12 lakhs. These adverse inferences go to the root of the matter and are in themselves sufficient to dislodge the presumption raised in terms of Section 118A read with Section 139 of the Negotiable Instruments Act.

18. It cannot be lost sight of that the present appeal is an appeal against a judgment of acquittal and therefore what ought to be the scope for interference by an Appellate Court ought to be examined.

19. Some of the relevant judgments in this regard are enumerated herein below:-

The Hon'ble Supreme Court in “Lunaram Versus Bhupat Singh & others, 2010(5) R.C.R. (Criminal) 530, held as under:-

“6. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See [Bhagwan Singh v. State of M.P.](#), 2003 (3) SCC 21). The

principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are substantial reasons for doing so. If the impugned judgment is clearly unreasonable and irrelevant and convincing materials have been unjustifiably eliminated in the process, it is a substantial reason for interference. These aspects were highlighted by this Court in [Shivaji Sahabrao Bobade v. State of Maharashtra](#) (1973 (2) SCC 793), [Ramesh Babulal Doshi v. State of Gujarat](#) (1996 (9) SCC 225), [Jaswant Singh v. State of Haryana](#) (2000 (4) SCC 484), [Raj Kishore Jha v. State of Bihar](#) (2003 (11) SCC 519), [State of Punjab v. Karnail Singh](#) (2003 (11) SCC 271), [State of Punjab v. Phola Singh](#) (2003 (11) SCC 58), [Suchand Pal v. Phani Pal](#) (2003 (11) SCC 527) and [Sachchey Lal Tiwari v. State of U.P.](#) (2004 (11) SCC 410).

7. In [Chandrappa and Ors. v. State of Karnataka](#) (2007 (4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) [The Code](#) 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 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.

(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.

[Emphasis supplied]

The Hon'ble Supreme Court in “C. Antony Versus K.G.

Raghavan Nair, 2002(4) R.C.R. (Criminal) 750, held as under:-

“6.This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of

innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court. See Bhim Singh Rup Singh v. State of Maharashtra (1974(3) SCC 762) and Dharamdeo Singh & Ors. v. The State of Bihar (1976(1) SCC 610).

[Emphasis supplied]

The Hon'ble Supreme Court in “State of Rajasthan Versus Mohan Lal, 2009(2) R.C.R. (Criminal) 812, held as under:-

“5. In view of rival submissions of the parties, we think it proper to consider and clarify the legal position first. Chapter XXIX (Sections 372- 394) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the present Code") deals with appeals. Section 372 expressly declares that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force. Section 373 provides for filing of appeals in certain cases. Section 374 allows appeals from convictions. Section 375 bars appeals in cases where the accused pleads guilty. Likewise, no appeal is maintainable in petty cases (Section 376). Section 377 permits appeals by the State for enhancement of sentence. Section 378 confers power on the State to present an appeal to the High Court from an order of acquittal. The said section is material and may be quoted in extenso:

"378. Appeal in case of acquittal.--(1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public

Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court, or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the [Delhi Special Police Establishment Act, 1946](#) (25 of 1946), or by any other agency empowered to make investigation into an offence under any [Central Act](#) other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal

from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

6. Whereas [Sections 379-380](#) cover special cases of appeals, other sections lay down procedure to be followed by appellate courts.

7. It may be stated that more or less similar provisions were found in the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") which came up for consideration before various High Courts, Judicial Committee of the Privy Council as also before this Court. Since in the present appeal, we have been called upon to decide the ambit and scope of the power of an appellate court in an appeal against an order of acquittal, we have confined ourselves to one aspect only i.e. an appeal against an order of acquittal.

8. Bare reading of [Section 378](#) of the present Code (appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the legislature on the powers of the appellate court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to re-appreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.

9. It cannot, however, be forgotten that in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty

by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court.

34. From the above decisions, in *Chandrappa and Ors. v. State of Karnataka, 2007(2) RCR (Criminal) 92: 2007(4) SCC 415*), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

(1) An appellate court has full power to review, reappreciate 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 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.

(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.

[Emphasis supplied]

This Court “Rekha Versus State of Haryana & another, 2019(4)

R.C.R. (Criminal) 294”, held as under:-

“13.While granting the leave applied for, this Court is to bear in mind that in case of acquittal there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the Fundamental principles of criminal jurisprudence that every person is presumed to be innocent unless he is proved to be guilty by a competent Court of law. Secondly, the accused having secured acquittal, the presumption of his innocence is certainly not weakened but re-inforced, reaffirmed and strengthened by the trial Court. When two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.”

[Emphasis supplied]

This Court “Karan Anand Versus Kamal Bakshi, 2015(4) R.C.R.

(Criminal) 595”, held as under:-

“5. In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary

to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

[Emphasis supplied]

20. The judgments of the Hon'ble Supreme Court and this Court are to the effect that while an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded, it is equally true that there is a double presumption in favour of the innocence of the accused, firstly on account of the presumption of innocence available to an accused and secondly on account of the fact that the competent Court has acquitted the accused and therefore, if two reasonable conclusions were possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

21. In view of the discussion hereinabove, two factors create a substantial doubt in the case of the complainant. Firstly, it is extremely doubtful that a person who had borrowed a sum of Rs.12 lakhs was in a

position to lend a sum of Rs.3 lakhs to the accused that too without any corresponding documentation.

Secondly, for the reasons best known to the complainant, he has denied the business relationship between himself and the accused, whereas, the accused has taken a specific stand that the blank signed cheque in question available with the complainant had been misused by him without the existence of any legally enforceable debt on the part of the accused. It may be also reiterated here that the complainant could very well have produced documentary evidence to substantiate the fact that the respondent-accused owed a debt or liability to the complainant either in the context of the business transaction or in the context of the accused simply borrowing money. The same not having been done, leads to only one probable inference, which is that the defence of the accused that the cheque in question has been misused appears to be a probable defence.

22. In view of the law relating to interference by this Court in a case of an appeal against acquittal, this Court sees no reason to interfere with the well reasoned judgment of the Trial Court and therefore, the leave to appeal is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

25.04.2022

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No