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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1004-2019
Date of Decision: 07.12.2022

JAGJIT SINGH

…Applicant

Versus

NAVEEN KUMAR

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. I.P.S. Kohli, Advocate
for the applicant.

HARSH BUNGER, J.

Applicant-Jagjit Singh has filed this application under Section 378(4) of the Code of Criminal Procedure, 1973, seeking leave to file appeal against the judgment dated 11.02.2019 passed by learned Judicial Magistrate Ist Class, Kapurthala, vide which, the respondent-accused was acquitted.

It is mainly stated in the application that the impugned judgment dated 11.02.2019 passed by learned Judicial Magistrate Ist Class, Kapurthala, is contrary to law and facts and the same is liable to be set aside. It is, therefore, prayed that leave to file appeal may be granted.

As per record, applicant-complainant (Jagjit Singh) filed a complaint under Section 138 of the Negotiable Instruments Act against respondent-accused (Naveen Kumar). As per the complainant's version, the respondent-accused borrowed a sum of Rs.5,50,000/-from the applicant-complainant for his personal needs and in order to discharge his liability, the respondent-accused issued a Cheque bearing No.894492 dated 20.03.2017 for a sum of Rs.5,50,000/- drawn on `Yes Bank Ltd.' Branch Link Road, Jalandhar Road, Kapurthala, from his account No.004285800000623 in favour of the applicant-complainant, which on presentation for encashment, was returned back dishonoured with the remarks "funds insufficient". Thereafter, the applicant-complainant served a legal notice dated 23.03.2017. 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.

The complainant examined himself as CW-1 (Jagjit Singh) and closed his preliminary evidence. Accused-respondent was summoned to face trial.

On appearance, the accused-respondent was admitted to bail and finding the *prima facie* case against him, he was served with notice of accusation under Section 138 of the Negotiable Instruments Act to which he pleaded not guilty and claimed trial. Complainant-applicant after examining himself as CW-1 closed his evidence.

Thereafter, statement of respondent-accused was recorded under Section 313 of the Code of Criminal Procedure, 1973, wherein all the incriminating circumstances appearing against him were put to him and he denied all the allegations leveled against him. He further pleaded false implication in the case. It was pleaded by the respondent-accused that the complainant has filed the complaint by levelling false allegations and he never issued any cheque in favour of the applicant-complainant for discharge of his any legal liability. He further took the stand that he does not owe any amount to the applicant-complainant.

Accused-respondent did not adduce any defence evidence.

Learned Judicial Magistrate Ist Class, Kapurthala, after appreciating the evidence, acquitted the respondent-accused vide impugned judgment dated 11.02.2019.

Aggrieved with the above-said judgment, 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 record 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 complainant has not been able to prove that there was any legally enforceable debt which was recoverable from the respondent-accused. It has come on record by way of admission of the applicant-complainant that the loan qua which the cheque in question was issued, the said loan was given in the year 2012, whereas, the date of issuance of cheque is stated as 20.03.2017. There is nothing on record to show that post the year 2015, there is any acknowledgment on the part of the respondent-accused qua the alleged debt. Further, a perusal of the file shows that during cross-examination, the applicant-complainant made the following statement :-

> "*he is in service of home guard. He joined the service in 1992. He was under suspension period and during suspension period, he was doing the work of property consultant. He stated that he never did the work of finance. He further deposed that during the suspension period he has lended money to 25-30 persons without any interest.*
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> *...he has filed 22-25 cases against different persons in various Courts. He deposed that at present at least 10 cases are pending in various Courts. He is having salary of Rs.32,000/- at present. He has no agricultural land on his name. He deposed that he is having no licence to lend the loan. He deposed that at present there are at least 20 lac rupees which he has to recover from the people and filed cases qua these 22 lac rupees in various Courts. Some money has been recovered qua which he has withdrawn these cases. He has given the money in cash and not by cheque to anyone.*"

A bare reading of the above-said cross examination would show that the applicant-complainant was in the service of home guard, which he joined in the year 1992 and he was having a salary of Rs.32,000/-. Applicant-complainant has admitted in his cross-examination that he has no agricultural land in his name and also that he was suspended from service and during the suspension period, he was doing the work of property consultant. The applicant-complainant has further admitted in his cross-examination that he never did the work of finance. However, he deposed that during the suspension period, he has lended money to 25-30 persons without any interest and he has also filed 22-25 cases against different persons in various Courts. The complainant has further admitted that he is having no license to lend the loan, however, he stated that he has to recover at least Rs.20 lacs from the people for which he has filed the cases.

The applicant-complainant has not brought on record anything to show that he has any other source of income and neither, he has depicted the loans advanced by him in his income tax returns. The applicant-complainant has further not shown any licence to do the business of money lending, especially when it is borne out from the cross-examination of applicant-complainant that he had lended money to 25-30 persons. Even if it is taken that the applicant-complainant has lent money, although without having any licence of money lending, even then the said advancement of money by the complainant to the respondent-accused is not only illegal but the applicant-complainant could be prosecuted for the same. It is well settled that a person lending money/loan to public at large without holding any money lending licence is legally debarred to recover the said amount/loan. In this regard, reference can be made to judgments of this Court in ***Balbir Singh vs Raj Krishan 2015(2) RCR (Criminal) 812***; ***Nari Dass vs Surender 2015(1) CivCC 489***.

Still further, the applicant-complainant has failed to prove that the alleged cheque amount was a legally recoverable amount. It is a pleaded case of the applicant-complainant that he had lent Rs.5 lac in the year 2012 to the respondent-accused. However, the cheque in question is stated to be issued on 20.03.2017 and there is nothing on record to show that the respondent-accused had acknowledged the alleged amount/debt within three years from the date of the alleged payment. Since, there is no acknowledgment of the loan/debt post 2015, accordingly, the so called amount/debt had become barred by limitation.

This Court in ***Manjit Kaur vs Vanita 2010(3) CCC 896*** held as under :-

> *"...9. Adverting to the facts of the instant case, the cheque was issued on 28.6.2003. On reckoning, it works out that the loan was advanced somewhere in June, 1999. A meticulous perusal of the evidence on record would reveal that the appellant has not produced any document or other evidence revealing that the accused-respondent had acknowledged the debt within three years from the date of loan. Thus, by the time, the cheque was issued, the debt became barred by limitation because no acknowledgment was obtained before the expiry of three years from the date of loan. Section 18 of the Limitation Act, 1963 deals with the theory underlying the doctrine of acknowledgment. The true principle underlying an acknowledgment is that it merely renews the liability and gives the creditor or claimant a fresh period of limitation according to the nature of the liability which exists at the date of the acknowledgment. An acknowledgment cannot be regarded as evidentiary of the debt but an acknowledgment that a person owes money to another, a specified person is good evidence of his owning money to another. The dishonoured cheque Ex. P1 cannot be treated as acknowledgment under Section 18 of the Limitation Act, since the acknowledgment should be before the period of limitation is over and that it should be in writing. Thus, it cannot be said that the appellant has been able to prove that Ex.P1 was in relation to a legally enforceable debt or liability in law as the same was admittedly issued after more than three years of the advancement of the alleged amount as loan..."*

Still further, 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 11.02.2019 passed by Judicial Magistrate Ist Class, Kapurthala, 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 07, 2022 **(HARSH BUNGER)**
gurpreet **JUDGE**

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

GURPREET KAUR
2023.03.03 19:43
I attest to the accuracy and
authenticity of this order/judgment