

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

CRM-A-551-2022 (O&M)

Date of Decision: 15.11.2022

DEEPAK SHARMA

..... Petitioner

Versus

SATENDER SINGH RAWAT

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Mandeep Kaushik, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

CRM-35621-2022

Application is for condonation of delay of 239 days in filing
the appeal.

Keeping in view the averments made in the application, the
application is allowed and delay is condoned.

CRM stands disposed of.

CRM-A-551-2022

1. The appellant through instant application under Section 378(4)
Cr.P.C. is seeking grant of special leave to appeal against order dated
12.11.2018 whereby learned Judicial Magistrate Ist Class, Yamuna Nagar
has dismissed complaint of the appellant, filed under Section 138 of
Negotiable Instruments Act (for short, 'NI Act') and further acquitted the
accused/ respondent.

2. The brief facts emerging from record and argument of learned
counsel for the appellant are that appellant paid a sum of Rs.1 lakh through
banking channel on 21.02.2015 to the respondent and further paid in cash a
sum of Rs.2 lakhs in two installments for getting his brother appointed in

Railway Department. The respondent failed to get a job in the Department of Railway for the brother of the appellant, thus, appellant asked the respondent to return his money. The respondent agreed to return his (appellant) funds and accordingly issued two cheques of Rs.1.5 lakh each dated 11.02.2016 and 16.02.2016 respectively. The appellant presented the aforesaid cheque which came to be returned on account of 'insufficient funds'.

3. Learned Trial Court has dismissed complaint on the sole ground that rigour of Section 138 of N.I. Act can be invoked if only there is legally enforceable liability and it is admitted case of the appellant that he had paid a sum of Rs.3 lakhs to respondent for getting job in the Department of Railway which is a Government Department. The money even if accepted was paid, it was for illegal activities and it cannot be called as legally enforceable liability.

4. Learned trial Court has dismissed complaint of the appellant on the ground that complainant knew from the beginning that he was advancing money to the accused for procuring railway job for the brother of the complainant. Railway is a Government Department which has a mechanism of employment, thus, securing a Government job by giving money is an illegal agreement. Learned Trial Court has further held that complainant had knowledge at the time of advancing money that the same was going to be used for illegal purposes. Thus, there does not exist any legally enforceable debt for which the cheque in question was issued.

5. Learned counsel for the appellant pleaded that there exists a legally enforceable debt against the accused, however, learned trial Court has wrongly recorded finding that cheque was not issued in discharge of legally enforceable debt/liability.

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 view of the above narrated facts, 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 trial Court. The impugned judgment and order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and

well-reasoned needs no interference of this Court. Therefore, request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and consequently, appeal is dismissed.

(JAGMOHAN BANSAL)

JUDGE

15.11.2022

Ali

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