

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.213

Case No. : CRM-A-1459-2019

Date of Decision : December 13, 2022

Resham Singh Appellant

vs.

Shamsher Singh and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Mukesh Kumar Bhatnagar, Advocate
for the appellant.

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GURBIR SINGH, J. :

The instant application has been moved under Section 378 (4) Cr.P.C. seeking leave to file appeal.

Learned counsel for the appellant submitted that issuance of cheque was not denied. It was also not denied that the cheque was handed over to the appellant. So, the presumption was that the cheque was issued for consideration. The respondent no.1-accused did not lead any evidence. The burden was on the accused to rebut such presumption. It was further submitted that the learned Trial Court wrongly held when the accused had given the application to the Senior Superintendent of Police against the complainant, then there was no question to issue the cheque in question, whereas in the preliminary inquiry itself, it was found that a sum of Rs.1,91,000/- was due towards the accused and the learned Trial Court

wrongly acquitted the accused.

Heard.

As per the case of the complainant-appellant, in discharge of his legal liability, the respondent no.1-accused issued a cheque for Rs.2,00,000/- (Ex.C-1) from his account, drawn at HDFC Bank Ltd., Court Road Branch, Amritsar with the assurance that there were sufficient funds to honour the cheque. The cheque was duly presented but the same was returned with remarks “Account Closed” (Ex.C-2).

The complainant-appellant served a legal notice (Ex.C-3) within the stipulated time period demanding the payment, but respondent no.1-accused failed to pay the amount of the cheque. So, complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as – the Act) was filed. Notice of accusation was served upon respondent no.1-accused, to which he pleaded not guilty and claimed trial.

The complainant himself appeared as CW-1 in the trial. Statement of the accused under Section 313 Cr.P.C. was recorded. He denied the liability and submitted that he had not issued the cheque in discharge of his legal liability. The cheque was already lying with the complainant as he was partner in the bus and route permit owned by the complainant. The cheque in question was taken from him by the complainant as security and the same was misused by the complainant.

The respondent no.1-accused examined one Khushpreet Singh – Sales Officer of HDFC Bank as DW-1.

After hearing learned counsel for the parties and perusing the case file, learned Trial Court dismissed the complaint and acquitted

respondent no.1-accused, vide impugned judgment dated 22.02.2019.

Learned Trial Court held that the complainant failed to mention date, month and year when he had given loan to respondent no.1-accused or when the accused had issued the cheque in question. In the cross-examination, the complainant stated that he could not state the date, month and year when the cheque in question was handed over to him by the accused. He also stated that the cheque was handed over to him after the accused moved an application before the Commissioner of Police but thereafter, in cross-examination, he stated that the accused had issued the cheque after the inquiry report. It is highly improbable to believe when there was already a dispute between the complainant and respondent no.1-accused, in such circumstances, the accused would have issued the cheque in question in favour of the complainant.

I am in agreement with the findings recorded by the learned Trial Court that the accused was also made partner in the bus and dispute regarding running of bus was going on between the complainant and respondent no.1-accused. A complaint was also filed with the police and inquiry was conducted. Since dispute was going on between the parties, the complainant was required to specifically prove the account statement about amount which was due towards the accused on the date of issue of cheque. In the case in hand, it was not sufficient on the part of the complainant to say that in lieu of discharge of his legal liability, the respondent no.1-accused issued the cheque in question. In **State of Karnataka v. Hemareddy** reported as **AIR 1981 SC 1417**, it is held by

judgment or to give fresh reasoning when reasons assigned by the Trial Court are found to be just and proper.

In Sampat Babso Kale and another v. State of Maharashtra reported as 2019 (2) SCC (CrI.) 345, it is held that the law is well settled that presumption of innocence which is attached to every accused person, gets strengthened when such an accused is acquitted by the Trial Court and the High Court should not lightly interfere with the decision of the Trial Court. Thus, scope of interference in an appeal against acquittal is very limited, unless it is found that the view taken by the Trial Court is impossible or perverse.

No ground to grant leave to appeal is made out.

Dismissed.

December 13, 2022
monika

(GURBIR SINGH)
JUDGE

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