

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

210

CRM-A-589-MA-2022 (O&M)  
Date of Decision: 02.12.2022

Deepak Kumar

..... Appellant

Versus

M/s Chanan Singh Virk Commission Agents and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr.Nakul Sharma, Advocate  
for the appellant.

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**JAGMOHAN BANSAL, J. (Oral)**

1. The appellant through instant application under Section 378(4) Cr.P.C. is seeking grant of special leave to appeal against order dated 29.04.2022 whereby learned Judicial Magistrate First Class, Ferozepur has dismissed the complaint of the appellant filed under Section 138 of Negotiable Instruments Act (for short, 'NI Act') and Section 420 of IPC and further acquitted the accused/respondent.

2. The brief facts which are necessary for the adjudication of the present controversy and emerging from the record as well arguments of learned counsel for the appellant are that the appellant lent a sum of Rs.1,13,000/- in cash to the respondent and in discharge of his liability, the respondent issued a cheque No. 000502 dated 04.06.2018. The appellant

presented the cheque for its encashment which came to be returned on account of “Insufficient Funds”. The appellant in terms of Section 138 of the NI Act served legal notice upon respondent and thereafter preferred a complaint before Trial Court.

3. The complaint came for consideration before JMIC, Ferozepur who vide impugned order dated 29.04.2022 dismissed the complaint of the appellant and acquitted the respondent from the charge of 138 NI Act and 420 IPC.

4. Learned Trial Court noticed following facts and figures mentioned in the complaint vis-a-vis mandatory legal notice:

- i) Legal notice was not addressed to respondent whereas it was addressed to Gurbachan Singh son of Mohan Singh;
- ii) As per legal notice, the amount allegedly received on 22.04.2018 was Rs. 50,000/- whereas amount of cheque in question was Rs. 1,13,000/-
- iii) The number of cheque mentioned in legal notice was 000005 dated 15.06.2018 whereas cheque mentioned in the complaint was 000502 dated 04.06.2018.

With above-noted facts and figures, Trial Court came to a conclusion that there was stark dichotomy between legal notice and complaint, thus, no legal notice had been served upon the respondent qua cheque in question. With this finding, Trial Court dismissed complaint of the present appellant/applicant.

5. Learned counsel for the appellant contended that signatures of the respondent over cheque are undisputed, thus, there was presumption of legally enforceable liability against the respondent and in favour of the

appellant. The trial Court has mechanically dismissed complaint of the appellant. There was clerical mistake in the legal notice which could not be made basis of dismissal of complaint.

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, reappreciate 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. A three judge bench of the Apex Court in *Ashok Kumar Singh Chandel Vs State of U.P. 2022 Live Law (SC) 915* has adverted with question of jurisdiction of High Court in appeals against acquittal. The Apex Court has held:

***I. Jurisdiction of the High Court in Appeals Against Acquittals***

*91. This is the first preliminary submission and it is based on a principle laid down by this Court that in an appeal against acquittal, the criminal appellate court will not interfere with the acquittal unless there are substantial and compelling reasons. The common submission of all the counsels appearing for the Appellants is, therefore, that the High Court was not justified in reversing the order of acquittal.*

*92. The position of law with respect to the jurisdiction of the High Court in cases of appeals against acquittals is well established. After reviewing the judgments on this subject, this Court clarified in Chandrappa v. State of Karnataka<sup>24</sup> that:*

*“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.”*

**93.** It is sufficient to note the principle laid down in the Constitution Bench of this Court in *M.G. Agarwal v. State of Maharashtra*<sup>25</sup>:

*“16. ...But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in *Sheo Swarup v. King Emperor and Nur Mohammad v. Emperor* [AIR 1945 PC 151] ...*

*17. ...Similarly in *Ajmer Singh v. State of Punjab* [(1952) 2 SCC 709 : 1953 SCR 418] it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling*

*reasons to do so”. In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial”. Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings*

*recorded therein as perverse...*”

94. Following the Constitution Bench, this Court in *Ghurey Lal v. State of UP*<sup>26</sup> has formulated the following principles:

*“69. The following principles emerge from cases*

*1. The Appellate Court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*

*2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*

*3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.*

*70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallized by number of judgments if it is going to*

*overrule or otherwise disturb the trial court's acquittal:*

*1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.*

*A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:*

- i. The trial court's conclusion with regard to the facts is palpably wrong;*
- ii. The trial court's decision was based on an erroneous view of law;*
- iii. The trial court's judgment is likely to result in “grave miscarriage of justice”;*
- iv. The entire approach of the trial court in dealing with the evidence was patently illegal;*
- v. The trial court's judgment was manifestly unjust and unreasonable;*
- vi. The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*
- vii. This list is intended to be illustrative, not exhaustive.*

*2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

*3. If two reasonable views can be*

*reached - one that leads to acquittal, the other to conviction - the High Courts/Appellate Courts must rule in favor of the accused.*

9. 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.

10. In the case in hand, Trial Court has dismissed complaint on the ground of stark dichotomy between legal notice and complaint. Legal notice is required to be served under Section 138 of NI Act. For the ready reference, section 138 of NI Act is reproduced as below.

**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may

*extend to [68](#)[two] years, or with fine which may extend to twice the amount of the cheque, or with both:*

*Provided that nothing contained in this section shall apply unless—*

- (a) the cheque has been presented to the bank within a period of six months\*[from the date on which it is drawn or within the period of its validity, whichever is earlier;](#)*
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [69](#)[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.*

*Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.*

*The period of “six months” mentioned in S. 138 proviso (a) remains unchanged as there has been no amendment in this regard. However, RBI vide Circular RBI/2011-12/251 DBOD AML BC No. 47/14.01.001/2011-12, dated 4-11-2011, in exercise of the power under S. 35-A of the Banking Regulation Act, 1949 has changed the default period within which a cheque may be presented for payment, from a period of six months from the date of the instrument, to a period of only three months*

*from such date, w.e.f. 1-4-2012. The operative part of the said Circular reads:*

*“Accordingly, in exercise of the powers conferred by Section 35-A of the Banking Regulation Act, 1949, Reserve Bank hereby directs that w.e.f. April 1, 2012, banks should not make payment of cheques/drafts/pay orders/banker's cheques bearing that date or any subsequent date, if they are presented beyond the period of three months from the date of such instrument.”*

*The result is that the impact of the above RBI Circular is covered by the latter part of proviso (a), namely, “or within the period of its validity, whichever is earlier;”.*

11. From the perusal of above quoted Section, it is quite evident that service of notice qua dishonour of cheque is not a mere formality whereas it is mandatory requirement of the law governing dishonour of cheque. The difference in the complaint vis-à-vis legal notice is not a mere clerical mistake whereas there is difference qua cheque number, date, amount etc. Even notice has been addressed to a different person. Thus, there is total and gross non-compliance of mandate of law. The appellant at the initial stage could take remedial steps, however, appellant waited for outcome of the complaint and at this stage is claiming that mistakes are clerical mistakes. The contention of the appellant is not tenable.

12. Having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered opinion that in the case in 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 to interference. Therefore, request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and appeal stand dismissed.

13. All pending miscellaneous applications, if any, shall also stand disposed of.

( JAGMOHAN BANSAL )  
JUDGE

02.12.2022  
*anju*

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