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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2870-2017(O&M)
Date of Decision: 11.05.2022

Ganpati Motors

.....Petitioner

Versus

Krishan Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sunil Saharan, Advocate
for the petitioner.

Mr. Raman Chawla, Advocate
for the respondent.

JASJIT SINGH BEDI, J.(Oral)

The prayer in the present petition is for setting aside the impugned judgment dated 11.04.2017 passed by the learned Additional Sessions Judge, Hisar, whereby the respondent-accused has been acquitted on an appeal instituted by him against the judgment of conviction dated 17.09.2013/19.09.2013 passed by the learned Chief Judicial Magistrate, Hisar.

2. The brief facts of the case are that a complaint under Section 138 of Negotiable Instruments Act was filed by the complainant/petitioner on the allegations that complainant was a

Beniwal son of Sh. D.N. Beniwal was partner of the complainant firm. It was alleged that for discharging of an existing, outstanding and legally enforceable liability, the accused in favour of the complainant issued a cheque bearing No.852125 dated 31.08.2009 for a sum of Rs.1,90,000/- drawn on ICICI Bank Limited, Hisar. The above-said cheque was issued with the assurance that the same would be honoured as and when presented with the bank for collection. On the assurance of the accused, the complainant presented the said cheque for collection with his bank i.e. Punjab National Bank, Dabra Chowk Branch, Hisar but to his surprise, the same was returned back with the remarks "Account closed" vide bank memo dated 02.09.2009. Thereafter, a registered legal notice dated 15.09.2009 was issued, calling upon the accused to make the payment of the amount of the abovesaid cheque to the complainant within fifteen days, through registered post. However, the accused refused to accept the delivery of the registered cover. Hence, the complaint was filed. After closure of preliminary evidence, the accused was ordered to be summoned to face trial under Section 138 of the Negotiable Instruments Act by the learned Trial Court on 27.10.2009. On notice, accused appeared and he was released on bail and put to trial.

3. To substantiate his case, the complainant examined Brijender Beniwal as PW-1. Thereafter, the evidence of the complainant was closed by Court order.

4. In documentary evidence, the complainant placed on record the following documents:-

Exhibits	Name of documents
Ex. P1	Copy of agreement of partnership
Ex. P2	Original cheque
Ex. P3	Memo dated 02.09.2009
Ex. P4	Copy of legal notice
Ex. P5	Postal receipt
Ex. P6	Registered envelope
Ex. P7	Acknowledgment
Ex. P8	Copy of balance sheet of M/s Ganpati Motors, Hisar.
Ex. P9	Copy of balance sheet of M/s Ganpati Motors, Hisar.
Ex. P10	Copy of cash book M/s Ganpati Motors, Hisar.
Ex. P11	Copy of challan
Ex. P12	Copy of ledger account M/s Ganpati Motors, Hisar.

5. The statement of the accused under Section 313 Cr.P.C. was recorded, wherein the accused refuted all the allegations levelled against him and pleaded innocence.

6. In defence, the accused examined Sunil Kumar, Branch Manager, SBI Mangali as DW-1, Rajender Sawant as DW-2 and himself as DW-3. In defence, the accused also placed on case file the following documents:-

Exhibits	Name of documents
Ex. D1	Copy of receipt of Ganpati Motors dated 07.03.2006
Ex. D2	Saving bank pass book in the name of Charan Singh @ Charna
Ex. D3	Copy of complaint under Section 12 of the Consumer Protection Act titled Charan Singh Vs. M/s Ganpati Motors & others
Ex. D4	Copy of written statement in case titled Charan Singh @Charna Vs. M/s Ganpati Motor Dealer etc.

Exhibits	Name of documents
Ex. D5	Attested copy of order passed by District Consumer Disputes Redressal Forum, Hisar.
Ex. D6	Copy of Form VAT-A2
Ex. D7	Copy of application dated 05.01.2008
Ex. D8	Copy of affidavit of Bijender Beniwal
Ex. D9	Copy of letter issued by Taxation Inspector
Ex. D10	Letter regarding challan dated 16.01.2006
Ex. D11	Temporary, Registration Certificate issued by Hari Autos.

7. After hearing the learned counsel for the parties and perusal of evidence and other documents on the case file, the Trial Court convicted the accused for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo for a period of one year and to pay a fine of Rs.2000/-.

8. Against the judgment of conviction of the Trial Court, an appeal was preferred by the accused-respondent and a revision petition for enhancement by the complainant. The appeal preferred by the accused was allowed vide judgment dated 11.04.2017 and the revision-petition of the complainant was dismissed.

9. It is against this judgment of acquittal that the present revision-petition has been preferred.

10. The learned counsel for the petitioner/complainant contends that there is a document Ex.CR-6 i.e. an affidavit dated 10.02.2006 executed by the respondent/accused as a guarantor of Charan Singh, his relative. In fact, the relative of the accused i.e. Charan Singh had taken a vehicle from the complainant on 10.02.2006 and even over the vehicle delivery slip the signatures of the accused are present. The liability is of

the person who issues the cheque even if the said cheque is issued for the discharge of the liability of a third person and therefore, the respondent-accused could not have been acquitted. He further submits that the cheque admittedly bore the signatures of the respondent/accused and once the signatures were admitted, a presumption arose that the said cheque was issued in the discharge of his legally enforceable debt. In the present case, the respondent/accused had not been able to rebut the said presumption and therefore, he ought to be convicted under the provisions of the Negotiable Instruments Act. Even otherwise, it was not believable that the signatures of the accused could be obtained on a blank papers, which is the version set up by the respondent/accused. He thus, contended that the order of acquittal ought to be set aside and the accused/respondent be convicted.

11. On the other hand, the learned counsel for the respondent/accused submitted that in the present case, the complainant has not proved as to for what liability the cheque was issued by the accused, whereas, it is the specific version of the accused that the cheque was obtained from him by the complainant at the time when he had purchased a scooter from another agency of the complainant. Reference was also made to para 2 of the complaint, wherein, it was mentioned that the cheque was issued for the discharge of a legally enforceable debt without any more details. Similarly, even in the legal notice issued to the accused, the liability of the accused was not disclosed. It was for the first time in the affidavit Ex.PW1/A dated 15.12.2011 that the liability of the accused was disclosed by the complainant that the cheque was issued by

purchased a vehicle from the complainant. Even in the said affidavit, it had not been disclosed as to when the said relative Charan Singh had purchased the vehicle. It was, thus, contended that this improvement was fatal to the case of the complainant. He further argued that from the defence evidence, especially the deposition of DW1-Sunil Kumar, Branch Manager, SBI Mangali, it is proved that the said Charan Singh had obtained a loan for the purchase of a vehicle from the bank and had cleared the same and even otherwise, the accused had no concern with the loan account of Charan Singh. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **M.S. Narayana Menon @ Mani Versus State of Kerala, 2006(3) R.C.R (Criminal) 504**, wherein, the Hon'ble Supreme Court held that though there was a presumption of the presence of a legally enforceable debt but the same was a rebuttable presumption. In the present situation, here the complainant had not produced before the Court his account books and therefore an adverse inference ought to be drawn against him, which would rebut the statutory presumption available to him.

12. I have heard the learned counsel for the parties at length.

13. In the present case, admittedly, the cheque was not given by the accused for the discharge of his debt or liability. As per the version of the complainant, it was given for the discharge of the liability of the debt of the relative of the accused/respondent namely Charan Singh. Strangely, there is no evidence to prove that the said Charan Singh was ever asked by the complainant to discharge his liability. The complainant has come with a version that the said cheque Ex.P2 was issued by the

said Charan Singh as the accused had stood as a guarantor for him. As per the available record, Charan Singh had purchased the vehicle from the complainant on 10.02.2006, whereas the cheque in question is dated 31.08.2009. This clearly establishes that the version of the complainant that the cheque was given to him by the accused as a guarantor of the said Charan Singh by the respondent/accused is incorrect. Further, it is the admitted case of the complainant that the said cheque bore only the signatures of the accused and the rest of the contents were not in his hand. This substantiates the defence version of the accused that at the time of the purchase of the motorcycle by him from the other agency of the complainant, he had given a blank cheque to the complainant. This version of the respondent/accused seems to be a probable version.

14. In so far as, the law relating to the scope of interference in an appeal against acquittal is concerned, the learned counsel for the respondent/accused has referred to the judgment of the Hon'ble Supreme Court in the case of Nagbhushan V. State of Karnataka, (2021) 5 SCC 222, where it was held as under:-

“5.2 Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.

5.2.1 In the case of Babu v. State of Kerala, (2010) 9 SCC 189, this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. 1973 In paragraphs 12 to 19, it is observed and held as under:-

12. This Court time and again has laid down the guidelines for the High Court to interfere with the

judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama VS. Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445).

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404)

“... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of

innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P.(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755).

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under (SCC P.432, para 42):

“(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."

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier

judgments of this Court and laid down that: (SCC p. 374, para 20) “20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.”

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

" A similar view has been reiterated by this Court in Dhanpal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the

presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

(emphasis supplied)

5.2.2 When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under: "20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn* (1984) 4 SCC 635, *Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* 1992 Supp (2) SCC 312, *Triveni Rubber & Plastics v. CCE* 1994 Supp. (3) SCC 665, *Gaya Din v. Hanuman Prasad* (2001) 1 SCC 501, *Aruvelu v. State* (2009) 10 SCC 206 and *Gamini Bala Koteswara Rao v. State of A.P.* (2009) 10 SCC 636)."

(emphasis supplied)

5.2.3 It is further observed, after following the decision of this Court in the case of *Kuldeep Singh v. Commissioner of Police* (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon,

the conclusions would not be treated as perverse and the findings would not be interfered with.

5.3 In the case of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C., 1973 and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)"10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to re-appreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case."

31.1 In Sambasivan v. State of Karala (1998) 5 SCC 412, the High Court reversed the order of

acquittal passed by the learned trial court and held the accused guilty on re- appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)".

8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babula Doshi v. State of Gujarat (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well- considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an

appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In K. Ramakrishnan Unnithan v. State of Karala (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding

the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to re-appreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley v. State of U.P. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 809-10).

"5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.PC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well- established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of

observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P. AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In K.Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."

[emphasis supplied]

15. Of course, *Nagbhushan's* case (supra) is a case of an appeal against acquittal but the principles would apply to the present revision petition as well.

16. In view of the facts mentioned above and the arguments raised by both the parties, it cannot be said that the impugned judgment is perverse in any manner, so as to be set aside. In fact, the view taken by the Additional District Judge, Hisar is a probable one and this Court shall not set aside the well-reasoned judgment of the Lower Appellate Court, only on account of the fact that another view was possible.

17. In view of the above, this Court sees no reason to interfere with the well reasoned judgment of the Lower Appellate Court. Therefore, the present revision petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

11.05.2022
JITESH

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