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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRA-AS-183-2022 (O&M).
Decided on: August 03, 2022.

Anil

.. Appellant

VERSUS

M/s Nawab Agri. Engineering Workshop and another
.. Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT Mr. Jasmer Singh Rozera, Advocate,
for the appellant.

VINOD S. BHARDWAJ, J. (ORAL)

The present appeal has been preferred against the judgment dated 24.08.2019, passed in Criminal Complaint No.2209 of 2018, titled as '*Anil Vs. M/s Nawab Agri. Engineering Workshop and another'*, instituted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act') whereby the trial Court dismissed the complaint filed by the appellant – complainant and acquitted the respondent – accused of the accusations levelled against him.

2. The brief facts of the case are that the complainant was engaged in the business of manufacturing agricultural implements and the

accused had purchased the agricultural implements through various bills and in discharge of his liability qua the aforesaid bill, accused issued a cheque bearing No.514761 dated 29.11.2017 for an amount of Rs.4,90,000/- from his bank account number drawn at Syndicate Bank, Baraut, District Sonepat in favour of the complainant. On presentation of the cheque, the same was returned by the bank with remarks "funds insufficient" vide memos dated 30.11.2017, 04.01.2018 and 27.02.2018. Thereafter, the complainant got served a legal notice dated 19.03.2018 upon the accused calling upon him to make payment of cheque amount within 15 days from the receipt of the legal notice. But despite the legal notice, the accused did not pay the cheque amount to the complainant. It has been further stated that the accused knowingly and delibrately did not honour the said cheque and in this way, he has committed an offence punishable under Section 138 of N.I. Act.

3. The petitioner-complainant led preliminary evidence and closed the same on 01.05.2018. On the basis of the preliminary evidence, Court summoned the respondent-accused to face trial for the commission of offence punishable under Section 138 of N.I. Act.

4. Presence of the accused was secured and notice of accusation was served on the accused vide order dated 28.03.2019, to which he pleaded not guilty and claimed trial and the case was adjourned for evidence of the complainant.

5. The petitioner-complainant Anil appeared in the witness-box as CW-1 and tendered his affidavit Ex.C1 whereby he reiterated the

averments of the complaint. He also proved the following documents i.e. original cheque (Ex.C2), Return memos (Ex.C3 to Ex.C5), Legal notice (Ex.C6), Postal receipts (Ex.C7 and Ex.C8), acknowledgement (Ex.C9 and Ex.C10), Resolution (Ex.C11), Account Ledger (Ex.C12) and Copy of aadhar card of complainant (Ex.C13). Thereafter, evidence of the petitioner-complainant was closed.

6. The statement of respondent-accused under Section 313 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') was recorded while putting the entire incriminating material appearing in the complainant's evidence to him, to which he pleaded to be innocent and alleged his false implication by the complainant.

7. Thereafter, the case was adjourned for defence evidence. Accused-respondent examined Bijender @ Manju as DW-1, Rojudeen @ Kalu as DW-2 and Ajay as DW-3. Accused also proved the following documents i.e. ledger account (Ex.D1), bank account statement (Ex.D2), Vat- R1 (Ex.DW3/A) and Form Vat- R1 (Ex.DW3/B). Thereafter, defence evidence was closed by the respondent-accused.

8. Upon consideration of the rival submissions of the respective parties, the Judicial Magistrate First Class, Karnal, came to the conclusion that the appellant- complainant could not establish his case and that the respondent – accused duly discharged the burden of proof placed upon him and successfully rebutted the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881 by raising a probable defence. He, thus, acquitted the respondent – accused of the accusations levelled

against him.

9. Aggrieved thereof, the present appeal has been preferred.

10. Learned counsel appearing on behalf of the appellant-complainant has argued that the respondent – accused had failed to respond to the legal notice dated 19.03.2018 (Ex.C-6) served upon him and further, that there was no dispute raised by the respondent-accused qua his signature on the cheque. He submitted that the respondent – accused failed to respond to the accrual of liability at the first available opportunity and that the defence adopted at the stage of trial is an afterthought. He further referred to the testimony of DW-2 Rojudeen @ Kalu who is brother of the respondent – accused where the said witness is stated to have acknowledged that he had given a cheque of Rs.20,000/- to the appellant-complainant at the shop of his elder brother and on a second occasion, he had obtained a self cheque for a sum of Rs.50,000/- from his brother and after withdrawing the said amount gave it to the appellant. He further admitted in the cross-examination that a cheque had also been taken in the year 2016 and cash had been given in the year 2017. He has further taken a self cheque from his brother and had withdrawn a sum of Rs.70,000/- from the bank and gave it to the appellant- complainant. On the basis of the aforesaid admission, learned counsel appearing on behalf of the appellant- complainant has contended that the said admission duly establishes a fiscal relationship amongst the parties and also proves that the respondent – accused owed the amount to the appellant-complainant and that the cheque in question had been issued by the respondent – accused in discharge of a legally

enforceable debt and a pre-existing liability. He argued that there is a presumption against the drawer of a cheque under Section 139 of the N. I. Act and that in the event of the cheque being dishonoured, the liability on account of the same is attracted against the accused. He also made a reference to the judgment reported as *2018 AIR (SC) 3601, titled as 'T.P.Murugan (Dead) through LRs Vs. Bojan*, to contend that there is a statutory presumption once a cheque has been signed and issued in favour of a holder, that it is issued in discharge of a legally enforceable debt.

11. I have heard the submissions advanced by the learned counsel for the appellant- complainant as well as perused the evidence relied upon by the appellant- complainant. While dealing with the issue of a pre-existing liability and a legally enforceable debt, the trial Court recorded a factual finding which reads thus:-

> *"In the case in hand, the complainant has relied upon Ledger Account Ex.C12 in which admittedly the last transaction took place on 28.09.2016 (inadvertently shown as 28.10.2016) and as per this Ledger Account Ex.C12, the accused owed Rs.2,79,156/- and it is also admitted that after last transaction, no goods were supplied by the complainant to the accused, whereas, cheque in question Ex.C2 is of Rs.4,90,000/- which exceeds the legally enforceable debt. Thus the version of the complainant is completely belied by documentary evidence and it is settled proposition of law that the accused can rebut the presumption u/s 139 of NI Act by proving non existence of legally enforceable debt as shown in the cheque in question. If the cheque amount exceeds the legally enforceable debt, the complaint is not maintainable u/s*

*138 of NI Act. In this regard, reliance can be placed upon a case reported as **Basheer Versus Wheels Auto Finance, 2017 (3) RCR (Civil) 908**, (Kerala High Court) wherein the Hon'ble High Court has held that if the amount covered by the Cheque exceeds the legally enforceable debt or other liability, the offence under Section 138 of NI Act is not attracted. Remedy for the said cheque as the amount covered by the said cheque is not enforceable in law. Same view was taken by the Hon'ble High Court in a case titled as **M/s Manohar Lal Aggarwal Vs. Manjit Singh (P&H): CRM No. A-652-MA of 2015 (O&M) decided on 31.07.2018**, wherein it was held by the Hon'ble Punjab & Haryana High Court that the complainant has produced the record and rather in the complaint, complainant stated that the liability against the accused was of Rs.1,06,032/- then how he can fill the amount of Rs.1,50,000/- and legal notice was also issued to pay this amount, which was in excess of cheque amount and the bills pertaining to accused were of only Rs.40,000/- and liability of bills pertaining to his brother, can not be put upon the accused without any cogent documentary evidence.*

Thus facts of the case in hand are squarely covered by Manohar Lal Aggarwal (Supra)."

12. Furthermore, it is well settled in law that a mere failure to respond to a legal notice sent to an accused after dishonour of the cheque is not an acknowledgement of a liability. The burden regarding the existence of the liability and the same being legally enforceable is to be discharged by the complainant once the presumption regarding the existence of the liability is rebutted by an accused by leading a probable defence. It is not

mandated in law that an accused must necessarily step into the witness box to deny the existence of the liability. The judgments of the Hon'ble Apex Court have upheld that the accused can place reliance on the suggestions made and the contradictions in the evidence of the complainant itself for raising a probable defence. The ledger account brought on record by the appellant- complainant, at best, establishes a liability only to the extent of Rs.2,79,156/- whereas the cheque in question is to the tune of Rs.4,90,000/-. The appellant- complainant cannot be permitted to contend that he has proved the liability of the cheque on the basis of showing certain financial transactions amongst the parties. The circumstances surrounding the issuance of the cheque and the debt/liability against which said cheque is claimed to be issued must co-relate. If the appellant- complainant fails to establish the liability qua the amount written in the cheque that has been dishonoured, there is no presumption attached to the existence of the liability and legally enforceable debt qua the amount mentioned in the cheque. A complainant cannot be permitted to fill any amount in an instrument that has been handed over to him blank and signed and to claim that there would be a presumption regarding the existence of the liability mentioned in the cheque irrespective of the proven liability. The amount mentioned in the cheque is nearly double the liability that has been brought on record by the appellant- complainant to exist as per ledger. He has failed to establish as to how the amount as in cheque became due and payable to him. Furthermore, the testimony of DW.2 Rojudeen @ Kalu (the brother of the complainant) cannot be read to mean anything beyond what has been stated therein. The same can only be read to mean and interpret that there was a fiscal and financial relationship amongst the parties. The said testimony, however, cannot be read as an admission of the liability mentioned in the cheque. No such admission is recorded in the said testimony as well.

13. The Hon'ble Supreme Court has summarised the aspect of presumption under Section 139 of the Negotiable Instruments Act, 1881 through various precedent judgments and has held that the presumption enshrined under Section 139 of the Negotiable Instruments Act is not absolute and is rather a rebuttable presumption. The accused would be discharged of the presumption, the moment an accused raises reasonable suspicion with respect to the due execution of the cheque. It is not incumbent upon an accused to lead evidence and even subjecting the complainant to cross-examination on such aspects can be taken as sufficient grounds to shift the burden upon the complainant to establish that the debt in question was duly advanced to the drawer of the cheque. Once such suspicion is created by an accused, the burden of proof would thereafter shift upon the complainant to prove that the cheque had been executed in discharge of a pre-existing liability/legally enforceable debt. Existence of legally enforceable debt is a pre-requisite for issuance of a cheque.

14. It is a settled proposition of law that presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from a presumption of fact, such a presumption is a rebuttable presumption and the drawer of the cheque may dispel the same.

15. The aforesaid position in law stands settled in the judgment of the Hon'ble Supreme Court in the matter of ***Hiten P. Dalal Vs. Bratindranath Banerjee (2001) 6 SCC 16***. While dealing with the aspect of presumption in terms of Section 139 of the Negotiable Instruments Act, the Hon'ble Supreme Court observed as under:-

> *'21. The appellant's submission that the cheques were not drawn for the 'discharge in whole or in part of any debt or other liability' is answered by the third presumption available to the Bank under Section 139 of the Negotiable Instruments Act. This section provides that "it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability". The effect of these presumptions is to place the evidential burden on the appellant of proving that the cheque was not received by the Bank towards the discharge of any liability.*
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> *22. Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in* ***State of Madras vs. A. Vaidyanatha Iyer AIR 1958 SC 61****, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused" (ibid). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of*

innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists" . Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.

24. Judicial statements have differed as to the quantum of rebutting evidence required. In Kundan Lal Rallaram vs Custodian, Evacuee Property, Bombay AIR 1961 SC 1316, this Court held that the presumption of law under Section 118 of Negotiable Instruments Act could be rebutted, in certain circumstances, by a presumption of fact raised under Section 114 of the Evidence Act. The decision must be limited to the facts of that case. The more authoritative view has been laid down in the subsequent decision of the Constitution Bench in

> *Dhanvantrai Balwantrai Desai vs State of Maharashtra AIR 1964 SC 575, where this Court reiterated the principle enunciated in State of Madras vs Vaidyanath Iyer (Supra) and clarified that the distinction between the two kinds of presumption lay not only in the mandate to the Court, but also in the nature of evidence required to rebut the two. In the case of a discretionary presumption the presumption if drawn may be rebutted by an explanation which "might reasonably be true and which is consistent with the innocence" of the accused. On the other hand in the case of a mandatory presumption "the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under S.114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted......" (Emphasis supplied)*

16. The principles as regards presumption that may be raised under Sections 118 and 139 of the N.I Act and rebuttal thereof is summarised by the Hon'ble Supreme Court in ***Triyambak S. Hegde Vs. Sripad, reported as (2022) 1 Supreme Court Cases 742***, which reads thus:-

"1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposes an evidentiary burden and not a persuasive burden. Whether there is rebuttal or not would depend upon the facts and circumstances of each case."

17. It is thus evident from the reference to the evidence as well as the submissions made by the learned counsel appearing on behalf of the appellant- complainant that the respondent – accused had led sufficient evidence about a probable defence that the liability as mentioned in the cheque was not due and that the appellant- complainant has mentioned an amount which was nearly double the liability which may be ascertained from the ledger. No explanation has been given regarding the said variance

in the amount. Besides, learned counsel also failed to distinguish his case from the judgment of ***M/s Manohar Lal Aggarwal Vs. Manjit Singh (P&H): CRM No. A-652-MA of 2015 (O&M) decided on 31.07.2018*** as well as in the matter of ***Basheer Versus Wheels Auto Finance, 2017 (3) RCR (Civil) 908***, (Kerala High Court).

18. Furthermore, the precedent judgments of the Hon'ble Supreme Court have also examined the scope of interference by the appellate Court while examining an appeal against acquittal.

19. The Hon'ble Supreme Court has examined the aforesaid proposition in the matter of ***M. G. Aggarwal versus State of Maharashtra, AIR 1963 SC 200***, the relevant part whereof is extracted as under:-

> *"(16) Section 423(1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) 27 which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court ;naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a*

reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. 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. The King Emperor and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17.) Some of the earlier decisions of this Court, however, in emphasizing the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons": vide Surajpal Singh V. The State Similarly in Ajmer Singh V. State of Punjab, 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 and Harbans Singh v. The State of Punjab; 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. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reason-able doubt, and that the contrary view taken by the trial Court was, erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would *ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.'*

20. Furthermore, the Hon'ble Supreme Court has held in the matter of ***Nagbhushan vs. State of Karnataka, (2021) 5 SCC 212,*** as under:-

"*7.2 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.*

7.2.1 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. 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.

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

The aforesaid principle of law has consistently been *followed by this Court in Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under:*

"*(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: "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: "(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)*

7.2.2 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.*

7.2.3 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.

7.3 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 o Section 378 Cr.P.C. 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:

"*10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate 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:

"*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 noncompliance 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 reappreciate 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:

"*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.*
>
> *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)

21. Thus, the position which emerges from a perusal of the law as settled by the Hon'ble Supreme Court through its catena of judgments in matters pertaining to appeals against acquittal can be summarized as under:-

> "a) Powers of High Court in dealing with criminal appeals are equally wide whether the appeals are against conviction or acquittal.

b) In dealing with appeal against acquittal, the High Court bears in mind that the presumption of innocence is strengthened.

c) As an appellate Court, the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence.

d) 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".

e) The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, even though the view of the appellate court may be the more probable one.

f) 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 the 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.

g) 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.

22. From the consideration of the factual aspect noticed above, the consideration of the said submissions by the trial Court and the reasons given by the trial Court in the light of the law laid down by the Hon'ble Supreme Court; the presumption attached to a negotiable instrument under Section 139 of the Negotiable Instruments Act, 1881, as well as the scope of interference while entertaining an appeal against the judgment of acquittal, I am of the opinion that the appellant- complainant has failed to point out any illegality, impropriety or perversity or gross mis-appreciation of the law and fact by the trial Court. He could not demonstrate that the findings recorded by the trial Court were perverse or un-sustainable upon an objective and meaningful interpretation of the evidence brought before the Court.

23. It is well settled that an appellate Court would not interfere with the findings recorded by the trial Court solely because another view is also a probable and possible view. While exercising its appellate jurisdiction, the High Court does not substitute its opinion for that of the trial Court, unless the opinion of the trial Court suffers from illegality, impropriety, perversity or gross non-appreciation of the evidence or reflects

an abuse of power by the Court.

24. The present appeal is thus dismissed. The judgment dated 24.08.2019, passed in Criminal Complaint No.2209 of 2018, titled as '*Anil Vs. M/s Nawab Agri. Engineering Workshop and another*' by the Judicial Magistrate First Class, Karnal, is affirmed.

August 3, 2022. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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