

CRM-A-1602-MA-2018
CRM-A-1745-MA-2018

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

Sr. No.270

CRM-A-1602-MA-2018 (O&M)
Date of decision : 21.12.2022

Gurcharan Singh Baweja

.....Applicant-appellant

Versus

Deepak Arora

..... Respondent(s)

CRM-A-1745-MA-2018 (O&M)

Gurcharan Singh Baweja

.....Applicant-appellant

Versus

Deepak Arora

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Jaideep Verma, Advocate for the applicant/ appellant

AMAN CHAUDHARY, J.

This order will dispose of the applications bearing CRM-A-1602-MA-2018 and CRM-A-1745-MA-2018 (O&M), filed under Section 378(4) Cr.P.C., wherein the challenge is made to the judgment dated 19.03.2018, passed by the learned Judicial Magistrate, 1st Class, Ludhiana whereby, the respondent was acquitted of the charge levelled against him. For the purpose of deciding the present cases, the facts are being extracted from CRM-A-1602-MA-2018.

As per the complaint made under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), the respondent had approached the complainant-applicant for financial help, on which, a sum of Rs.16 lakh

was given to him in the month of June, 2015, on the assurance to return the same within two months. In order to discharge his liability, the respondent issued a cheque bearing No.158661 dated 12.08.2015 for a sum of Rs.6 lakh, drawn on HDFC Bank, Ltd. Pakhowal Road in favour of the complainant, which on presentation was got dishonoured vide memo dated 03.10.2015 with remarks “account closed”.

On notice of accusation under Section 138 of the Act, he appeared and pleaded not guilty. To prove its case, the complainant examined himself as CW1. Thereafter, statement of the petitioner under Section 313 of the Code of Criminal Procedure was recorded wherein he pleaded himself to be innocent. In defence, he examined himself as DW1 and Manpreet Singh as DW2.

After hearing the learned counsel for the complainant; the learned defence counsel and examining the evidence on the record, the learned trial Court acquitted the respondent herein.

Learned counsel contends that learned trial court had wrongly ignored the evidence on record and had erred in acquitting the accused -respondent on the ground that the applicant has failed to prove his financial capacity and source of his income. The applicant appeared as CW1 and proved the version made in the complaint. His wife has categorically stated in his cross-examination that she had sold a plot for a sale consideration of Rs.9,37,500/- through registered sale deed dated 08.06.2015, Ex.P-DW1/A, therefore, it is duly proved that the appellant had Rs.16 lakh in the month of June, 2015. He places reliance on the judgments in the case of Rohitbhai

Jivanlal Patel vs. State of Gujarat and another 2019(2) RCR (CrL.) 559 and
M/s Kalamani Tex and Anr. vs. P. Balasubramanian 2021(2) RCR (CrL.)
160.

Heard the learned counsel for the applicant and perused the
case file.

In **Sunil Kumar Sambhudayal Gupta and others vs. State of
Maharashtra 2011 (1) RCR (Criminal) 57** the Apex Court framed the
guidelines for the appellate court to deal with the matter of “appeal against
acquittal”, which are as under:-

“Appeal against Acquittal:

22. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must 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. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; 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. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. 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 with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should

be avoided, unless there are good reasons for such interference.

24. 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 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. A 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. (See: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P.**, AIR 2003 SC 1104; **Budh Singh & Ors. v. State of U.P.**, AIR 2006 SC 2500; **S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.**, AIR 2008 SC 2066; **Arulvelu & Anr. v. State**, (2009) 10 SCC 206; **Ram Singh alias Chhaju v. State of Himachal Pradesh**, (2010) 2 SCC 445; and **Babu v. State of Kerala**, (2010) 9 SCC 189)."

In the case in hand, the learned trial Court has rightly found there to be glaring discrepancies in so far as the alleged sale consideration and the market value of the property as per the agreement was concerned. Furthermore, the two witnesses of the said agreement did not step into the witness box, in absence whereof, the same remained unproved. Still further, the Court has taken into consideration the fact that the annual income of Rs.2,80,020/- would make it not believable that the complainant could advance a huge loan of Rs.16 lakh that to without any writing or collateral. Harpreet Singh in the presence of whom, the complainant in his cross examination had stated to have paid the loan amount to the accused, also did not step into the witness box to corroborate the case of the complainant. The trial Court had accordingly rightly come a conclusion that the complainant had failed to bring on record any cogent evidence showing his

source of loan amount or the transaction of loan. Thus, there is not even an iota of evidence against the present respondent, which could make out a prima facie case against him. No case for interference in the judgment of acquittal is made out.

The judgments relied on by the counsel for the applicant are distinguishable on facts.

In view of the above, there being no perversity or illegality in the impugned judgment passed by the learned trial Court whereby the respondent has been acquitted, the present applications for leave to appeal are dismissed.

A photocopy of the judgment be placed on the file of the connected case.

21.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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