

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

**CRM-A-797-2019 (O&M)
Date of decision : 27.02.2023**

Kuldeep Kumar

.....Applicant

versus

Dharamvir

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Parveen Kumar Rohilla, Advocate
for the applicant.

RAJESH BHARDWAJ, J.

This application has been filed for permission to grant leave against the order dated 03.11.2018 passed by learned Judicial Magistrate Ist Class, Karnal vide which, the complaint filed by the applicant/complainant was dismissed.

It has been contended by counsel for the applicant that the applicant before this Court is the complainant who filed the complaint under Sections 138 and 142 of the Negotiable Instruments Act against the respondent/accused but learned trial Court failed in appreciating the evidence on record and thus, drawn a wrong conclusion in dismissing the complaint by acquitting the respondent-accused which is unsustainable in the eyes of law. He submits that the applicant and the respondent were having cordial relations with each other. The respondent-accused formulated a committee in the month of September, 2015 of 11 members for 11 months and it was decided that all the members will deposit Rs.8,000/- every month with the respondent/accused. Respondent was in need of money for his personal use and he borrowed an amount of Rs.62,664/- from the applicant/complainant. When the

applicant/complainant demanded his money back from the respondent/accused, he issued post-dated cheque No.989290 dated 15.11.2016 amounting to Rs.1,50,664/- drawn on UCO Bank Ltd. Taraori, District Karnal. On presentation of the same, vide memo dated 30.12.2016, issued by the bank the cheque was dishonoured with remarks "funds insufficient". The applicant issued legal notice dated 06.01.2017 to the respondent/accused but no reply was given and thus, the applicant filed the complaint. He submits that after appearance of respondent/accused, the applicant/complainant appeared himself as CW1 and tendered his affidavit as Ex.CW1/A and besides this, he produced documentary evidence and thus, proved his case. In the statement of accused recorded under Section 313 Cr.P.C., he pleaded his innocence and alleged his false implication by the complainant. It is submitted by learned counsel that learned trial Court failed to appreciate the fact that respondent/accused failed to produce any document or agreement to show that there was any deal regarding lease of land as contended by the respondent/accused. He submits that the applicant/complainant paid sum of Rs.88,000/- to the respondent for committee purpose and Rs.62,664/- as advance which has not been appreciated by learned trial Court. He further submits that the complaint has been dismissed by the trial Court on the ground that the accused formed a committee which was against the public policy. Thus, there was no legal enforceable debt. It is submitted that once the respondent has admitted having been issued the cheque then the presumption under Section 139 of Negotiable Instruments Act is attracted but learned trial Court failed to appreciate the same and thus, the findings arrived at are totally perverse in nature and thus, the impugned

order deserves to be *set aside* and the respondent deserves to be convicted for the offence committed.

Heard. Learned trial Court has appreciated the evidence on record and on appreciation of the arguments raised by counsel for the applicant and perusing the record, it is apparent that learned trial Court has admitted the fact that accused formulated a committee for which there was no legal enforceable debt. Though there is a presumption lies under Section 139 of Negotiable Instruments Act, however, the same, is rebuttable. As per the case of the complainant, he himself entered into contract and paid money is against the public policy. Thus, he failed in proving that the cheque was issued to discharge legally enforceable debt or other liability. As per the case of the complainant, he had advanced a loan of more than Rs.62,664/- to the respondent-accused but there was no documentary evidence produced to prove the same. As the applicant failed to prove that the cheque was issued in discharge of the legal enforceable liability, thus, in the opinion of this Court, the view taken by trial Court in taking into consideration the complaint and acquitting the accused do not suffer from any perversity.

As per the law settled, the appeal against conviction and that against acquittal rests entirely on different pedestal. In case of acquittal, it has been held by Hon'ble Supreme Court repeatedly that if there are two views possible in a given case, then, the one favouring the accused should be adopted. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per the law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there lies double presumption of innocence in his favour. Hence, an Appellate

Court should not disturb in a cavalier manner the findings arrived at by the trial Court resulting in acquittal of accused and it is only in case of perversity of the findings, the Appellate Court should interfere in the acquittal order passed by the trial Court. In **Jafarudheen and others vs State of Kerala 2022 SCC Online SC 495**, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:-

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

Weighing the facts and circumstances of the present case on the anvil of law settled, this Court finds no perversity in the order passed by the trial Court. Resultantly, the present application for grant of leave to appeal is dismissed.

(**RAJESH BHARDWAJ**)
JUDGE

27.02.2023
m. sharma

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