

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.201

CRA-S-468-SB-2011 (O&M)
Date of decision:24.05.2023

Suraj Bhan

...Appellant

Versus

Hoshiar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Gourav Jain, Advocate,
for the appellant.

Mr. Malkiat Singh, Advocate,
for the respondent.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment dated 31.08.2009 passed by the learned Judicial Magistrate, 1st Class, Fatehabad, whereby the respondent was ordered to be acquitted of the notice of accusation levelled against him.

A complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') was filed by the present appellant/complainant by alleging that he was the proprietor of M/s Garg Agro Chemical Centre, Ghuna, Tehsil and District Fatehabad. The firm of the appellant was the dealer of the firm of the accused-respondent and had also an account with the respondent. As per the appellant, there was a deposit of Rs.3,52,205/- of the appellant's firm on 31.03.2008 with the firm of the accused-respondent. In order to settle the account, the respondent issued cheque No. 924200 dated 20.05.2008 drawn on UCO Bank, Nai Mandi Branch, Sirsa for a

sum of Rs.3,52,285. After this, an amount of Rs.3,11,000/- was taken vide DD No.279660 dated 20.05.2008, drawn on State Bank of Patiala, Bhuna Branch. The appellant presented the said cheque for encashment, but the same was dishonoured due to the reason that the payment was stopped by the drawer. Another cheque bearing No.685334 dated 11.08.2008 was also issued by the respondent in favour of the appellant for a sum of Rs.3,50,000/-. Again on presentation, the cheque was dishonoured due to the same reason and was returned to the appellant on 15.12.2008. Thereafter, the appellant served a legal notice, asking the respondent to make the payment of Rs.3,50,000/-, however the respondent failed to make the payment and a complaint was filed by the appellant before the learned trial Court.

I have heard learned counsel of the parties and with their able assistance, I have gone through the trial court record carefully.

Learned counsel for the appellant vehemently argued that in the present case, the learned trial Court completely brushed aside the evidence led by the present appellant and the impugned judgment is legally unsustainable. The appellant had led sufficient evidence to prove on record that the respondent was to pay a sum of Rs.6,63,285/- to the present appellant and the cheque in question was issued only for a sum of Rs.3,50,000/-, as a part payment of the amount due towards him. Even if it was to be assumed that the appellant had to give a sum of Rs.3,00,000/- to the respondent, still the respondent owed a sum of Rs.3,50,000/- to the present appellant. As a consequence, the impugned judgment, whereby the complaint was ordered to be dismissed, was passed by completely ignoring the evidence led by the parties. Apart from that, only a meager amount of Rs.2348.25 was available in the account of the respondent as on 09.12.2008 when the cheque in question was dishonoured due to the reason

“Payment stopped by the drawer”. Had he not stopped the payment of the cheque, it would have been dishonoured due to “Insufficient Funds”. Thus, the most material evidence was overlooked by the learned trial Court. Apart from that, the learned trial Court also overlooked the mandatory provisions of Section 139 of the Act, which raises a statutory presumption in favour of the present appellant.

Learned counsel appearing on behalf of the respondent refuted the said contention and submitted that in the impugned judgment, the learned trial Court has taken into consideration the entire evidence led by both the sides and after due appreciation, the impugned judgment has been passed. Learned counsel further contended that the appellant himself owed money to the present respondent and cheques of the respondent have been misused by the present appellant.

Having heard the learned counsel of the parties and going through the record of the case, I am of the considered opinion that there is no merit in the present appeal and the submissions made by the learned counsel for the appellant are liable to be rejected. The learned trial Court correctly placed reliance on the testimony of PW-1 Suraj Bhan, the complainant himself, who admitted in his cross-examination that he had an account with the firm of the accused-respondent at Hisar and he had to make a payment of Rs.3,18,802.50 to the accused-respondent in that firm. In fact there were several transactions between the appellant and the respondent. However, on the date of presentation of the cheque, admittedly the present appellant owed a sum of Rs. 3,18,802/- to the accused, he was not entitled to present the cheque and the payment was correctly stopped by the drawer of the cheque, i.e., the present appellant. Still further, the statement of PW-1 Suraj Bhan has been duly corroborated by Tarun

Kumar, DW-2 who also stated that the firm of the respondent had to take a sum of Rs.3,45,352.50 from the present appellant. Consequently a cumulative reading of the evidence led by both the sides, it stood established on record that the appellant was liable to pay a sum of more than Rs.3,00,000/- to the respondent-accused and the complaint was not maintainable on account of dishonour of the cheque in question.

Further, I find no substance in the submission made by learned counsel for the appellant that the statutory presumption under Section 139 of the Act would come to the rescue of the present appellant. In fact the complainant had to lead evidence to show that the respondent owes some money to him and the complainant is obliged to prove the said fact by leading oral as well as documentary evidence. Thereafter, the appellant can take help of the statutory presumption under Section 139 of the Act. Even otherwise, I have gone through the impugned judgment passed by the learned trial Court and the learned trial Court has recorded valid reasons for passing the impugned judgment.

It has been held by the Hon'ble Supreme Court in the matter of **Bhaskarrao Vs State of Maharashtra, 2018(5) RCR (Criminal) 268:AIR 2018 SCC 2222**, as follows:-

“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 - "The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent

reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.

15. *In Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:*

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably

wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, 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."

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance; thus, it must fail. No case for interference has been made out. Consequently, the judgment dated 31.08.2009 passed by the learned Judicial Magistrate, 1st Class,

is ordered to be upheld.

Resultantly, with the above-said observations made, the present appeal stands dismissed.

Pending application(s), if any, is also disposed off.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

24.05.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO