201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-281-MA-2010 (O&M)
Date of Pronouncement: 26.05.2023.

Surinder Kaur and another …Applicants

vs.

Vinod Singh …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Akhil Kashyap, Advocate for
Mr. P.K.Kataria, Advocate
For the applicants.

Mr. Chandan Singh Rana, Amicus Curiae and
Ms. Jasmeen Kaur, Advocate and
Ms. Renu Yadav, Advocate
for the respondent.

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N.S.Shekhawat J.

1. The applicant-Raghbir Singh has filed the present application under Section 378(4) Cr.P.C. to grant special leave to file an appeal against the impugned judgment dated 23.07.2009, passed by learned Special Judicial Magistrate, Amritsar, whereby the respondent was ordered to be acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act).

2. Initially, the complaint was filed by the applicant/complainant in the Court of learned Area Magistrate, Amritsar under Section 138 of the Act with the averments that the respondent/accused raised a loan from him and in order to pay off the debt and the legal liability, he had issued a cheque bearing No.278255, dated 25.05.2006 for a sum of Rs.2,50,000/- drawn on UCO Bank,

Kirti Nagar, Delhi. While issuing the cheque, the respondent assured the applicant that the cheque would be honoured as there were sufficient funds in his accounts. On the assurance and instructions from the respondent, the applicant presented the cheque for clearance and encashment through his bankers. However, the cheque was returned unpaid in original with the memo of the UCO Bank dated 16.06.2006 with the remarks “account closed”, which was returned to the applicant by his banker vide advice dated 17.06.2006. As such, the cheque was dishonoured and apparently, the respondent was well aware of the fact that the account was already closed. The applicant/complainant served a legal notice of the respondent/accused on 12.07.2006 under registered post acknowledgment through his counsel and requested him to make the payment within a period of 15 days, however, the respondent did not make the payment and ultimately, the applicant filed the complaint under Section 138 of the Act against him in the Court of learned Area Magistrate.

3. After the appearance of the respondent in the Court, the applicant examined himself as CW-1 and exhibited various documents in support of his case and closed the evidence. The statement of the accused/respondent was recorded under Section 313 Cr.P.C. and he clearly stated that he did not issue any cheque in favour of the applicant/complainant nor did he take any loan from him. On 25.05.2006, the respondent remained in his office at Delhi and did not come to Amrtisar. The son-in-law of the applicant had stolen cheque book from his residence and he had misused the same through his father-in-law i.e. the applicant/complainant. The cheque book containing cheques bearing No.253, 254 and 255, which were already signed, were taken away. The applicant had

filed a complaint against him at Delhi about the cheque bearing No.254, which had been decided against the applicant and cheque No.255 was given by Gurwinder Singh to the applicant and he has filed a false case against him in Amritsar. The respondent examined DW-1, O.P. Morio, Manager, UCO Bank, New Delhi and himself appeared in the witness-box as DW-2. He tendered his affidavit Ex.DA in evidence along with documents Ex. D1 to D7.

4. I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

5. Learned counsel for the applicant vehemently argued that in the present case, the respondent had appeared and admitted that he had signed the cheque, but he had falsely taken a stand that his cheques were stolen in the year 2000 and the respondent had closed his account on 19.07.2000. The respondent had further admitted that he came to know that the relatives of the applicant/complainant had stolen the cheques in the year 2000, but no complaint was filed by the respondent with the police regarding the theft of cheques by Balwinder Pal Singh till 2006 i.e. only till receipt of summons from the Court at Amritsar. He further contended that once the respondent had admitted the execution of the cheque, the presumption under Sections 118 and 139 of the Act come into force. As per the presumption under Section 118 of the Act, it shall be presumed that every negotiable instruments has been drawn or made for consideration unless the contrary is proved. He further submitted that the trial Court had completely overlooked the said provisions of law and the evidence had not been correctly appreciated in the light of the provisions contained in Section 118 and 139 of the Act.

6. The submissions made by learned counsel for the applicant have been refuted by learned counsel for the respondent, by submitting that the presumptions under Sections 118 and 139 of the Act would not come to the rescue of the applicant, as he had failed to discharge the initial burden. Even there was sufficient evidence on record that no transaction was made in the account of the respondent after the year 1999 and he had already made a complaint to the Bank that the cheques i.e. the blank signed cheques had been stolen and he got his account closed on 19.07.2000, which is evident from Ex.D4.

7. After hearing learned counsel for the parties and considering the evidence led by the parties in the light of the mandatory provisions of the Act, this Court is of the considered opinion that the application is meritless. The learned trial Court has correctly observed that the applicant had completely failed to lead any evidence as to how he came in contact with the respondent, who was resident of Delhi. There was no occasion for him to take loan from a person, who was resident of Amritsar. Apart from that, it is evident from Ex.D1 that on 25.05.2006, the respondent was present in the Branch of UCO Bank at Delhi, where he was serving as Daftri. Apart from that, it is also apparent from Ex.D5 that no transaction was made in his account after 17.11.1999 and he had moved an application to the Manager, UCO Bank, Kirti Nagar, New Delhi on 19.07.2000 i.e. his cheque book containing few blank signed cheques had misplaced and requested the Manager to close his account. Thus, it is unbelievable that the cheque was issued by the respondent on 25.05.2006. Apart from that, it is also apparent that another complaint was filed by son-in-law of the applicant against the respondent in Delhi, which was dismissed.

Thus, it is apparent that the applicant could not lead cogent and convincing evidence to prove the allegations against the respondent beyond the shadow of reasonable doubt.

8. This Court does not find any substance in the argument raised by the applicant that the presumptions under Sections 118 and 139 of the Act would come to his rescue, when the cheque was admittedly signed by the respondent. The meaningful reading of Sections 118 and 139 of the Act would clearly suggest that the initial burden has to be discharged by the complainant to prove that there was certain transaction, which led to the execution of the cheque. Once the initial burden is discharged, the presumptions under sections 118 and 139 of the Act would come into play. These presumptions are always rebuttable and even the accused can rebut the same even by referring to the evidence led by the complainant or may adduce independent evidence to rebut the same. In the present case also, the complainant had utterly failed in discharging the initial burden and the findings recorded by the learned trial Court are well-reasoned and are liable to be upheld by this Court.

9. Law is well settled as held in case of ***Babu v. State of Uttar Pradesh reported in A.I.R. 1983 SC 308*** that in appeal against acquittal, if two views are possible, the appellate Court should not interfere with the conclusions arrived at by the Trial Court unless the conclusions are not possible. If the finding reached by the trial Judge cannot be said to be unreasonable, the appellate Court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record because the trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The

appellate Court, therefore, should be slow in disturbing the finding of fact of the Trial Court and if two views are reasonably possible on the evidence on the record, it is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it.

10. In case of ***Ghurey Lal v. State of Uttar Pradesh reported in (2010) 45 OCR (SC) 444 : (2008) 10 SCC 450***, it is held as follows:-

> *"75....The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate Court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable."*

11. In case of ***Bannareddy v. State of Karnataka reported in (2018) 70 OCR (SC) 417 : (2018) 5 SCC 790,*** it is held as follows:-

> *"10.... It is well settled principle of law that the High Court Should not interfere in the well reasoned order of the Trial Court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the Trial Court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself."*

12. Thus, an order of acquittal should not be disturbed in appeal under Section 378 of Cr.P.C. unless it is perverse or unreasonable. There must exist very strong and compelling reasons in order to interfere with the same. Findings of fact recorded by a Court can be held to be perverse if the same have been

arrived at by ignoring or excluding relevant materials on record or by taking into consideration irrelevant/inadmissible material or if they are against the weight of evidence or if they suffer from the vice of irrationality.

13. In view of the foregoing discussions, I find no illegality or perversity in the impugned judgment. Therefore, I am not inclined to grant leave to the applicant to prefer application against the impugned judgment and order of acquittal.

14. Accordingly, the application for leave to appeal stands dismissed.

15. Pending applications, if any, are also disposed off, accordingly.

(N.S.SHEKHAWAT)
JUDGE

26.05.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No