

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-587-2022 (O&M)
Date of Decision: 11.09.2023

Saurabh Saini ...Applicant

Vs.

Gaurav Verma ...Respondent

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

Present : Mr. Onkar Chouhan, Advocate for
Mr. Sandeep Singh, Advocate
for the applicant.

N.S.SHEKHAWAT, J. (Oral)

CRM 36397 of 2022

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 53 days in filing application for leave to appeal.

2. I have heard the learned counsel for the applicant and perused the record.

3. For the reasons mentioned in the application, the delay of 53 days in filing the application for leave to appeal is ordered to be condoned.

CRM-A-587-2022

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant leave to appeal against the impugned judgment dated 12.02.2020 passed by Judicial

Magistrate 1st Class, Gurugram, whereby, the respondent was ordered to be acquitted of the charge.

2. The complaint was instituted by the applicant by stating that the applicant and the respondent/accused were having friendly relations. The respondent approached the applicant for a loan of Rs. 3 lacs for house hold purposes and out of trust, the said amount was given to him. Finally, in discharge of his liability, the respondent issued a cheque bearing No. 000034 dated 23.06.2016 amounting to Rs. 3 lacs drawn on HDFC Bank Limited and assured the applicant that on presentation with his bank for its realization, the same will be honoured. However, vide memo dated 19.08.2016, the cheque was returned unpaid with the endorsement “insufficient fund”. The applicant got a legal notice dated 10.08.2016 issued to the respondent and despite service of legal notice, the respondent did not make the payment within the mandatory period of 15 days and the applicant was constrained to file a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**'))

3. Learned counsel for the applicant vehemently argued that the parties were having friendly relations and the applicant had extended the loan to him and the cheque in question was issued in discharge of the legal liability. Still further, once it was proved that the signatures on the cheque were that of the accused, the initial

presumption as contemplated under Section 138 of the Act would arise. Learned counsel further submitted that the legal notice dated 10.08.2016 was issued to the respondent/accused to make the payment within 15 days, however, the respondent did not submit any reply and the silence on the part of the respondent for such a long duration itself negates the plea of defence taken by the respondent. The learned trial Court had wrongly accepted the explanation rendered by the respondent, which was not at all possible and believable. Still further, the financial capacity of the complainant was not a statutory requirement, as mentioned in Section 138 of the Act and the respondent has been wrongly acquitted by the learned trial Court.

4. Before proceedings further, it would be appropriate to refer to the evidence led by the parties and plea taken by the respondent/accused.

5. Applicant himself appeared into the witness box as CW1 and tendered on record his duly sworn affidavit Ex.CW1/A in his examination-in-chief mentioning therein the facts pleaded in the complaint which are not needed to be repeated here for the sake of brevity.

6. Respondent in his defence evidence has examined, DW-1 Laxmi Courier receipt Narayan Aggarwal who deposed that he was running business of Transportation in the name of Agarwal Safe

Home Packers & Movers. Gunagram office at G28, Dharam Colony and they have regional offices at various locations, (Bengluru, Hyderabad, Chennai etc.) and one of the offices is in Bengluru at B 129/130, 3rd main DDUTT, Yeshwanthpur Industrial Suburb, Bengluru. He deposed that Mr. Gaurav Verma was employed with his organization from the period of May 2016 to February 2018. He further deposed that Mr. Gaurav Verma was working as Warehouse Incharge at Bengluru branch and Mr. Gaurav Verma, in the period of June 2016, was present at his Bengluru branch for the whole month. Lastly he tendered certificate dated 20.12.2019 in support of his statement as Ex. DW1/1.

7. The respondent made a statement under Section 263(g) Cr.P.C. wherein he stated that his cheque book was lost in the year 2015-16 and as there was no balance in his account so he did not bother and neither he did any complaint to police nor gave any intimation to the bank. He further stated that he was working at Corbett National Park and his divorce case was pending at Gurugram so when he came here for the purpose of hearing of that case then police came to him and told about the present complaint. Lastly he stated that he never received any legal notice from the applicant pertaining to the present cheque in question and there was no his legal liability. against the applicant of any kind.

8. In the present case, the applicant had stated that he had given a sum of Rs. 3 lacs to the respondent on 22.05.2016 in cash. However, on the said day, he himself did not have the arrangement to make the payment to the present respondent. Even, the trial court rightly observed that in his cross-examination he had admitted that the accused had asked for money 10/15 days prior to the transaction and he had taken the money from his friends Bunty and others. However, neither any of his friends from whom he arranged such an amount was examined nor Bunty was examined to prove that the money was handed over to the respondent. For proving the offence under Section 138 of the Act, it was necessary for the applicant to discharge the initial burden that the amount was also handed over by him to the respondent. In the present case, the applicant could not lead any evidence at all to show that he had the financial arrangement to make the payment to the respondent and the money was handed over to the respondent. It was a case where the applicant had no source of income to lend such a huge amount to the respondent and he had utterly failed to prove that there was legally recoverable debt payable by the respondent to him. Apart from that, the applicant/complainant did not have sufficient financial resources and it is unbelievable that he had extended the said loan to the respondent without maintaining any document or record in this regard and the applicant clearly failed to prove the said fact before the Court. No doubt, there is a statutory

presumption of Section 139 of the Act in favour of the applicant/complainant, but the said presumption is a rebuttable presumption and the Court can also draw inference from the material brought on record by both the parties. The trial Court rightly held that there was no single document on file regarding salary/income of the applicant/complainant, any writing between the applicant and the respondent and in absence of the same, the case of the prosecution was liable to be disbelieved.

9. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** 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 reappreciation, 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 reappreciation 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 characterized 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."

10. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment passed by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence by the trial Court.

11. Sequally, the application for leave to appeal sans merit and is accordingly ordered to be dismissed.

12. All pending applications, if any, are disposed off, accordingly.

11.09.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking :

Whether reportable :

Yes/No

Yes/No