

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

CRM-A-1097-MA-2018 (O&M)
Date of decision:29.03.2023

SANJAY BHATIA

....Applicant/appellant

Versus

AMIT KUMAR MENDIRATTA

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Shiv Kumar, Advocate for the applicant.

Mr. Amaninder Preet, Legal Aid Counsel
for the respondent.

AMAN CHAUDHARY. J.

The present application under Section 378(4) CrPC for grant of leave to appeal has been filed challenging the judgment dated 07.03.2018 passed by learned Judicial Magistrate 1st Class, Faridabad, whereby the respondent was acquitted of the charges levelled against him.

Briefly put, the facts of the case are that the accused-respondent took a friendly loan of Rs.3,50,000/- from the complainant-applicant on 08.10.2015. In order to discharge the liability, he issued a cheque bearing No.001297 dated 09.12.2015, in favour of the complainant-applicant, which on presentation with the Bank, was returned back as unpaid vide return memo dated 15.12.2015, with the remarks "Funds Insufficient". Thereafter, legal notice dated 21.12.2015 was sent to respondent-accused calling upon him to make the payment but to no avail.

In preliminary evidence, complainant-applicant stepped into the witness box as CW-1 and also tendered documents in support of his claim.

In pursuance of notice of accusation, accused-respondent appeared and pleaded not guilty. In defence, he examined Kartar singh as DW1, Shivam Gupta as DW2, ASI Krishan Kumar as DW4, Ravi Pahwa as DW5 and Kapil Kumar as DW6.

After evaluating the evidence led by the parties, the learned trial Court acquitted the accused-respondent vide judgment dated 07.03.2018.

Hence the present application for leave to appeal.

Learned counsel for the applicant has contended that the trial Court committed grave error while acquitted the accused-respondent without appreciating the facts and circumstances of the case. It is proved on record that the accused-respondent had taken a friendly loan from the applicant and to discharge his liability, he issued the cheque in question and his signatures thereon were admitted.

On the other hand, learned counsel for the respondent submitted that the complainant could neither prove the loan transaction nor his capacity to advance the loan. Thus, the learned trial Court rightly acquitted the respondent. He has placed reliance on the judgment passed by Hon'ble The Supreme Court in the case of **Rajaram S/o Sriramulu Naidu (Since Deceased) through LRs vs. Maruthachalam (Since deceased) through LRs**, 2023 AIR (Supreme Court) 471.

Heard.

In Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra 2011 (1) RCR (Criminal) 57 Hon'ble The Supreme Court has framed the guidelines for the appellate court to deal with the matter of "appeal against acquittal", which read thus:-

“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).”

It is apposite to make a reference to the order passed by the trial Court, wherein it has been specifically observed that the testimony of the complainant-applicant did not appear to be trustworthy, with material contradictions made therein, his ITR showing his declared income as Rs.3,80,000/-, advancing of loans to many persons and filing of a number of complaints under Section 138 of NI Act, non-production of the licence under Section 3 of the Punjab Registration of Money Lenders Act, he having been not able to produce any writing or receipt regarding advancement of loan of Rs.3,50,000/- to the respondent. On the other hand, the accused-respondent was able to successfully rebut the presumption under Sections 118 and 139 of NI Act, that he had no liability towards the complainant-applicant. Learned counsel for the applicant has not been able to demonstrate any illegality or perversity in the judgment of the trial Court.

In **Rajaram’s** case (supra), Hon’ble The Supreme Court found that the High Court was not justified in reversing the order of acquittal of the appellant. The trial Court had found that it was highly doubtful that the complainant had lent the money to the accused as in the income tax return of the complainant the said fact was not disclosed and his declared income was not sufficient to give loan of Rs.3 lakh. It was observed that the defence raised by the appellant satisfied the standard of “preponderance of

probability”. The scope of interference in an appeal against acquittal is limited. Unless the High Court found that the appreciation of the evidence is perverse, it could not have interfered with the finding of acquittal recorded by the learned Trial Court.

In view of the aforesaid, this Court finding that the judgment of the trial Court require no intervention, the present application for seeking leave to appeal is dismissed being bereft of merit.

(AMAN CHAUDHARY)
JUDGE

March 29, 2023

M.Kamra

Whether speaking/reasoned : Yes /No

Whether reportable : Yes /No