

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

CRM-40412-2017

CRM-A-2686-MA-2017

CRA-AS-47-2023

Date of Decision: 09.02.2023

NARESH KUMAR

...Applicant

Versus

SANJEEV CHAUDHARY @ SANJEEV KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Charanji Lal, Advocate
for the applicant.

HARSH BUNGER, J.

CRM-40412-2017

There is delay of 52 days in filing the accompanying appeal.

For the reasons recorded in the application, the same is allowed and delay of 52 days in filing the accompanying appeal is condoned.

Criminal Misc. Application stands disposed of accordingly.

CRM-A-2686-MA-2017 and **CRM-AS-47-2023**

CRM-A-2686-MA-2017 has been filed under Section 378(4) of the Code of Criminal Procedure, for grant of leave to appeal against impugned judgment dated 30.01.2017 passed by learned Judicial Magistrate Ist Class, Kaithal, whereby, the criminal complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, has been dismissed and the respondent has been acquitted of the charges framed against him.

Brief facts of the case, as mentioned in the impugned judgment, are that the respondent-accused took a loan of Rs.4,10,000/-

from the applicant-complainant for construction of his house and to discharge his liability, the respondent-accused issued a Cheque bearing No.109455 dated 14.03.2022 for Rs.2,25,000/- drawn on Axis Bank, Haridwar, with the assurance that the same would be honoured on presentation. However, upon presentation, the said cheque was returned back dishonoured vide Memo dated 11.07.2012 with remarks “*Insufficient Funds*”. Upon this, the applicant-complainant issued a legal notice dated 09.08.2012, calling upon the respondent-accused to make the payment within stipulated period of 15 days. Upon failure of the respondent-accused to make the payment, a complaint under Section 138 of the Negotiable Instruments Act was filed by the applicant-complainant.

On the basis of preliminary evidence, the respondent-accused was summoned to face trial under Section 138 of the Negotiable Instruments Act and subsequently notice of accusation was also served upon him on 09.11.2016, to which, he pleaded not guilty and claimed trial.

In order to prove its case, the applicant-complainant stood into the witness box as CW1 and tendered the following documents :-

<i>An affidavit</i>	<i>Ex.CW1/A</i>
<i>Cheque</i>	<i>Ex.C1</i>
<i>Memos</i>	<i>Ex.C2 and Ex.C3</i>
<i>Statements of Account</i>	<i>Ex.C4 and Ex.C5</i>
<i>Legal notice</i>	<i>Ex.C6</i>
<i>Postal Receipt</i>	<i>Ex.C7</i>

Thereafter, statement of the respondent-accused under Section 313 of the Code of Criminal Procedure, was recorded, wherein, all the incriminating evidence was put to him, to which he pleaded innocence and false implication.

In the defence evidence, the respondent-accused examined one Rajesh Kumar as DW1, who deposed that he alongwith Dilbag, was working in the Sunrise School, Fatehpur and Dilbag was a Yoga teacher and know the complainant-Naresh Kumar, through yoga.

The case of the respondent-accused was that the applicant-complainant had failed to prove on record the fact that the cheque in question, was issued by the respondent-accused in discharge of any legally existing liability as in fact, the cheque in question was never issued to the complainant rather it was given to one Dilbag for the purposes of appointing him as a teacher. It is the case of the respondent-accused that no evidence had been led by the applicant-complainant to prove the source from where he gave the cheque amount.

Learned trial Court, after appreciating the evidence, acquitted the respondent-accused of the charges framed against him vide judgment dated 30.01.2017 and dismissed the complaint under Section 138 of the Negotiable Instruments Act. Accordingly, the present application seeking leave to appeal has been filed before this Court.

In the backdrop of aforementioned facts and circumstances, an application **CRM-A-2686-MA-2017** for leave to appeal is allowed, whereupon, the appeal is numbered as **CRM-AS-47-2023.**

CRM-AS-47-2023

I have heard learned counsel for the appellant and gone through the paper book as well as impugned judgment dated 30.01.2017 passed by learned Judicial Magistrate 1st Class, Kaithal.

Here, it would be apposite to refer to few judicial pronouncements regarding the scope and parameters, in which, interference can be made in a judgment of acquittal.

In *'Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479'*, Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

In the case of *'Arulvelu v. State represented by the Public Prosecutor, 2009(4) RCR (Criminal) 638'*, the Hon'ble Supreme Court has observed as under:-

“39. In Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above :

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's*

conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

*40. This Court in a recently delivered judgment **State of Rajasthan v. Naresh @ Ram Naresh, 2009(11) SCALE 699** again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused..."*

In 'Allarakhak.Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748', Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

Coming to the case in hand, the learned trial Court, after appreciating the evidence on record, observed as under:-

"7...Under section 138 of N.I. Act, it was incumbent upon the complainant to prove that in discharge of legally existing liability, accused issued cheque in question. Accused in plea of defence submitted that accused was a student of Master Degree in Yoga at

Gurukul, Kangadi Haridwar and Dilbag Singh accompanied the accused when accused visited along-with his student of Yoga. It has been further submitted that Dilbag Singh assured the accused that he will arrange job as a Yoga instructor and he has to pay Rs.2 lacs and Dilbag Singh also assured that the said amount will be paid after appointment. On believing Dilbag Singh, accused gave 2 blank cheques to him but he failed to arrange a job for him and when he demanded back the cheques, he flatly refused and even accused gave an application to police of Haridwar regarding this but no action was taken in the matter. When the complainant was cross-examined and the entire defence of accused was put to him, the case of complainant lost its ground. While deposing in cross-examination, complainant stated that accused came to his house one or two times but he never went to accused house before taking the money. He further stated in cross examination regarding his income and categorically stated that he earns Rs.15,000/- to 20,000/- per month but he does not earn that much to pay income tax and the entire amount was given to accused without any interest and that too for 4-5 days. He further stated that at the time of giving of money, no document was taken by him and before this, he never gave any money to accused nor gave any cheque to him, therefore, it was upon the complainant to at least state what kind of relationship was existing between the complainant and the accused so that court would ascertain as to whether the complainant had actually given Rs.2 lacs under the guise of the relationship persistent between accused and the complainant. The complainant in cross-examination has stated regarding his income and as per his own averment, he earns Rs.15,000/- to Rs.20,000/- per month but he does not pay any income tax. Complainant has placed on file the

account statement of Ram Singh son Bhag Singh and while submitting the arguments, complainant counsel stated that it was out of the account of complainant's father, the entire amount was given to the accused, however, this argument of learned counsel for complainant is not acceptable in light of the fact that it was never averred by the complainant in its complaint nor remotely referred while desposing in examination-in-chief, therefore, accused cannot be taken by surprise at the time of submitting of the arguments that what actually the case of complainant is, therefore, plea of complainant that he had given money from his father's account is not acceptable. It was upon the complainant to show what was the source of income when a specific defence is taken by the complainant that he had no source to pay such a huge amount to the accused when both accused and complainant are not in a close relationship. The presumption of Section 139 of NI Act lies in favour of complainant but the same is rebuttable by the accused.

8. When the accused has put a specific defence to the complainant as to his source of income and to his capacity to pay then in cross-examination, the complainant was to explain how the transaction was made but there is no conclusive evidence on the file which could substantiate the case of complainant that on 05.01.2012, accused borrowed Rs.4 lacs from the complainant and in discharge of that liability, cheque in question has been issued. There is no dispute regarding the signatures of accused on the cheque, however, the very fact of handing over the cheque in question to the complainant has been denied by the accused. In cross-examination, complainant has further alleged that he had given money to the accused out of friendship and there was no document entered regarding the said transaction and money is led

*without any interest. However, it is difficult to assume that such a huge amount of money would be given by complainant to the accused when the relationship between accused and complainant was never pleaded by him in the complaint. Reliance is placed upon **Shiva Murthy Vs. Amruthraj 2009(2) CCC 160** wherein Hon'ble Karnatka High Court held that "Cheque issued against loan – Lending of huge amount of Rs.75,000/-. Complainant not in a financial position to lend such a huge amount and that too without interest – Failure to prove existence of legally enforceable debt – There is no question of drawing presumption u/s 139 of the Act – Conviction set aside." No writing qua transaction was made, therefore, the presumption of legally existing debt existing in favour of complainant is not proved. It is also pertinent to mention here that in complaint as well as in affidavit, the complainant has failed to allege in whose presence such a huge amount was made. However, during cross-examination, he submitted that in his father's presence, he had given the said cheque but this fact finds no mention in the entire evidence as well as in the complaint. Thus, there is no question of drawing presumption in favour of complainant.*

9. *In view of above discussion, the accused has been acquitted of the charges framed against him. His personal bonds and surety bonds stand discharged. Bonds to the amount of Rs.30,000/- with one surety in like amount under Section 437A of IPC furnished which are accepted and attested. File be consigned to record room after due compliance."*

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Complainant had miserably failed to prove the source from where he paid the alleged amount

to respondent, especially when it was the pleaded case of respondent herein that complainant had no source to pay the alleged amount to respondent herein. Further, there is no document pertaining to alleged transaction nor there is any pleading qua close relationship between complainant and respondent herein. It is also not forthcoming as to in whose presence, the alleged amount was paid by complainant to respondent.

When the findings given by the trial Court are considered in the light of the legal position indicated above; no interference is called for; especially when the appellant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 30.01.2017 passed by learned Judicial Magistrate Ist Class, Kaithal.

No other argument was raised

In view of the above discussion, the instant appeal is bereft of any merit and the same is accordingly dismissed. The judgment dated 30.01.2017 passed by learned Judicial Magistrate Ist Class, Kaithal is upheld.

All pending application/s, if any, shall stand closed.

February 09, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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