

CRM-19147-2019 IN/AND
CRM-A-1229-MA-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-19147-2019 IN/AND
CRM-A-1229-MA-2018 (O&M)
Date of decision: July 25, 2023

Baby

....Applicant

versus

Neer Akhtar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Mayank, Advocate for
Mr. Veneet Sharma, Advocate for applicant.

ARUN MONGA, J. (ORAL)

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For the reasons stated in application, same is allowed. Main case which was dismissed for non-prosecution vide order dated 21.05.2019 is restored to its original number and the same is taken on Board today itself. Registry to do the needful.

Main case (O&M)

Present application has been filed under Section 378 (4) of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for grant of leave to appeal against judgment dated 23.02.2018 passed by Judicial Magistrate First Class, Yamuna Nagar at Jagadhri whereby complaint filed by applicant against respondent-accused under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), was dismissed and respondent was acquitted of the notice of accusation served upon her.

2. Brief facts first, as pleaded in the application seeking leave to appeal.

2.1. On having visiting terms with each other, complainant/applicant herein had given an amount of Rs.2.80 lakh to respondent-accused on 05.12.2015. To discharge her existing liability, accused issued a cheque bearing No.981346 dated 05.01.2016 in the sum of Rs.2.80 lakh drawn on State Bank of India, Branch Jagadhri, District Yamuna Nagar. When complainant presented the said cheque in the Bank, the same was dishonored vide bank memo dated 13.01.2016 with the remarks 'Funds Insufficient'.

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Complainant served a legal notice dated 18.01.2016, but accused failed to make said payment. Ultimately, the complaint was filed.

2.2. After appreciating the evidence on record, vide impugned judgment dated 23.02.2018, learned Court below acquitted the respondent-accused of the notice of accusation served upon her.

2.3. Aggrieved, applicant-complainant filed the present application seeking leave to appeal against aforesaid impugned judgment.

3. Learned counsel for applicant would contend that learned Court below did not take into consideration the fact that respondent-accused had admitted her signatures on the cheque in question and therefore, she had to rebut the presumption against her under Section 139 of the NI Act, but no evidence was led by respondent in her defence. Further contends that One Payal wife of Kala to whom allegedly the cheque in question was stated to have been handed over, was not produced by the respondent for the reasons best known to her. On 04.12.2015, applicant withdrew an amount of Rs.2.90 lakh from her bank account which shows that applicant had financial capacity to extend the loan.

4. I have heard learned counsel for the applicant and perused the case file.

5. Impugned order dated 23.02.2018 acquitting respondent-accused of the notice of accusation is, *inter alia*, premised on the following reasoning:

“12. Upon the careful perusal of the case file, it is revealed that the signatures on the cheque are not being disputed by the accused. Under such circumstances, since signatures on the cheque are being admitted, this court is of the opinion that prima facie presumption exists in favour of the complainant and the onus of rebutting the said presumption was upon the accused who could have done so on the basis of his defence evidence as well as on the basis of circumstances existing in the case and from cross examination of the complainant.

13. In order to rebut the presumption under Section 139 of the Act, the accused has cross-examined the complainant. As per the complainant, she had visiting terms with accused and accused had borrowed Rs.2.80 lac for a month on 05.12.2015 from her and had issued the cheque in question dt.05.01.2016 in discharge of her said liability, but the same got dishonoured 'for want of funds'. On the contrary, the accused has taken a defence that she does not know the complainant and never borrowed any money. It is contended by accused that she had given a blank signed security cheque to one Payal wife of Kala under a money committee which was for Rs.50,000/- for a period of twenty months. The committee began three years ago and the accused finally settled payment under the

same approximately one and a half year ago. It is contended that her aforesaid security cheque has been misused by the present complainant in collusion with Payal.

14. *The complainant has placed on record statement of her bank account as Ex.C5, which shows that she had withdrawn Rs.2.90 lac from her bank account on 04.12.2015 through a self cheque. Hence, the complainant had the financial capacity at the relevant time which otherwise is disputed by the accused. The complainant has stated in her cross-examination that she lives with her father and her father is a fruit seller. She deposed that she is not earning. It is strange that the complainant who is not earning anything has a bank account from which she withdrew money and allegedly gave Rs.2.80 lac to accused. Certainly, the source of finance is her father whom she has not examined. It is hard to believe that she could have lent such a huge amount to accused without consulting her father. Moreover, there is no pronote/receipt to suggest borrowing by accused from complainant. The complainant could have opted to issue an account payee cheque in the name of accused whereby she could have kept a record of the alleged payment. It is pertinent to mention that Hon'ble Punjab & Haryana High Court in Suresh Vs. Narender Gautam 2016 (1) RCR (Crl.), 798 has further held that where the complainant fails to prove that he had advanced the amount to the accused and where no receipt or authenticated document was produced by the complainant to substantiate his claim, the accused cannot be convicted on a vague allegation of the complainant. Further, it has been held in Vijay Vs Laxman & Another 2013(1) R.C.R (Crim) S.C 1028, that when there is no proof i.e. document or material on record to prove loan transaction, and no date of demand of loan and of giving of loan is given, the version of the complainant that he had advanced a loan to the accused cannot be believed and accused is entitled to acquittal.*

15. *Perusal of the cheque in question would reveal that signature on the cheque and rest of the body of cheque is filled with different ink. It suggests that the body of the cheque was filled at a different time and the cheque was signed at some other time. This fact further creates suspicion in the story of the complainant qua issue of the cheque in question by the accused. This court finds reliance on this aspect from the decision of the Hon'ble Delhi High Court in Vipul Kumar Gupta v. Vipin Gupta 2012(8) R.C.R.(Criminal) 1799.*

16. *Hon'ble Delhi High Court in Vipul Kumar Gupta v. Vipin Gupta 2012(8) R.C.R.(Criminal) 1799 has held that accused has only to create a doubt in the version of the complainant, while the complainant has to prove the guilt of the accused beyond doubt.*

17. *Hence, in view of my foregoing observation and discussion, the accused has rebutted the presumption under section 139 of the Act. As such, the accused is hereby acquitted of the notice of accusation served upon her. Her bail bonds and bonds of her surety stands discharged. File be consigned to the records after due compliance."*

6. Perusal of the aforesaid, in my opinion, shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

7. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; First the presumption of innocence, and Secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

8. In **Anil Kumar Gupta vs. State of U.P.**², it was held as under:-

“This Court held 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 an order of acquittal unless it comes to the conclusion that the 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. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.

(emphasis supplied)

11. This Court following the decision in *Ramesh Babulal Doshi*, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.’

9. In this case, findings recorded by learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.

¹ 2002(4) RCR (Criminal) 750 SC

² 2001(2) RCR(Criminal) 292 SC

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- 10. Instant application seeking leave to appeal is hereby dismissed.
- 11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 25, 2023
mahavir

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