IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1287-MA-2018
Date of Decision: 24.01.2023

ASHOK KUMAR

…Applicant

Versus

JAGJIT SINGH

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. B.B.S. Randhawa, Advocate
for the applicant.

HARSH BUNGER, J.

The instant application has been filed under Section 378(4) of the Code of Criminal Procedure, for grant of leave to appeal against impugned judgment dated 02.01.2018 passed by learned Judicial Magistrate Ist Class, Batala, 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.1,50,000/- from the applicant-complainant for purchase of machinery for Atta Chakki and to discharge his liability, the respondent-accused issued a Cheque bearing No.703081 dated 06.02.2017 for Rs.1,50,000/- drawn on Allahabad Bank, Branch Qadiyan Chungi, with the assurance that the same would be honoured on presentation. However, upon presentation, the said cheque was returned back dishonoured vide Memo dated 07.02.2017 with remarks "*funds insufficient*". Upon this, the applicant-complainant issued a legal notice dated 13.02.2017, 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 19.04.2017, 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 :-

Duly sworn affidavit	*Ex.CW1/A*
Original cheque	*Ex.C1*
Original memo	*Ex.C2*
Copy of legal notice	*Ex.C3*
Postal Receipt	*Ex.C4*

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 stepped into the witness box as DW-1 and further examined his mother Jagir Kaur as DW2, his father Kashmir Singh as DW3 and one Bachan Singh as DW4.

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 enforceable liability as in fact, the applicant-complainant stole the cheque book of the respondent-accused and by himself entering an amount of Rs.1,50,000/-, presented it in the bank. It is the case of the respondent-accused that no evidence had been led by the applicant-complainant to prove the source of income of Rs.1,50,000/-, which is alleged to have been advance to the respondent-accused.

Learned trial Court, after appreciating the evidence, acquitted the respondent-accused of the charges framed against him vide judgment dated 02.01.2018 and dismissed the complaint under Section 138 of the Negotiable Instruments Act. Accordingly, the present application seeking leave to appeal along with appeal has been filed before this Court.

I have heard learned counsel for the applicant and gone through the paper book as well as impugned judgment dated 02.01.2018 passed by learned Judicial Magistrate 1st Class, Batala.

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 thereare "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* ***GhureyLal 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 courthad 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 ***'Allarakha K.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:-

12. The point for determination firstly is that whether the cheque in question was issued by the accused in favour of complainant in discharge of legally enforceable liability as stated in the present complaint. In this regard, CW-1 Ashok Kumar has stated on oath that he had advanced Rs.1,50,000/- to accused for the purchase of machinery and to repay the said amount, accused issued the cheque in question for the sum of Rs.1,50,000/-, which on presentation was returned back dishonoured due to insufficiency of funds. On the other hand, accused has come forward with a plea that he was not having any such liability towards complainant and the complainant has actually committed theft of the cheque book of accused and by filling the amount of Rs.1,50,000/- has misused the cheque in question. However, there is no denial on the part of accused that the cheque in question bear his *signatures, but he has submitted that the cheque book was lying in his shop and the accused has committed theft. On the other hand, from the perusal of cheque in question Ex.P1, it is evident that the same has been filled with one ink in one hand. As such, once accused has admitted his signatures on the cheque in dispute, thus, it clear that the body of the cheque was also filled by him. As per section 139 of the Act, if accused has admitted his signatures upon the cheque in question, then it would be presumed that the said cheque was issued by him in discharge of the legally enforceable liability as alleged by complainant and onus shifts upon accused, to prove otherwise. It is well settled that the above said presumption can be rebutted even from the cross-examination of complainant himself and no positive evidence is required to be led by accused in this regard. However, to rebut that presumption, accused has forward with a plea that the complainant has committed theft of the cheque book and misused the cheques by writing Rs.1,50,000/- in his own hand. The accused has even placed on record photocopy of letter moved to SSP, Batala qua the theft of cheque.*

13. It is apposite to mention here that it is an admitted fact between the parties qua the previous litigation between them. The complainant has admitted that earlier till the time of tenancy relations between both the parties were cordial. However, post that there relations turned sour. The complainant also admitted that he was demanding Rs.1,50,000/- from the parents of the accused for evicting the shop which they did not give him. The witness also admitted that he was not paying rent to the accused's parents. It is also admitted that when chain of litigation commences between the parties then relations between them do not remain good.

...The complainant has not produced any books of account or any other proof to show that he had so much amount in the bank or that the amount was lying with him. He admittedly did not have any written document pertaining to the accused. He accepted that there was no witness to the transaction. He, of course, denied certain suggestions, but the suggestions put to him are required to be considered in the backdrop of the facts and circumstances of the case. It is a settled preposition of law that in case of friendly loan, there is no requirement of executing a written document, but in the present case the scenario is different as relation between both the parties was bitter. Thus, in these circumstances, it is valid enough to conclude that complainant has failed to discharge the initial burden to prove the fact that he was having the alleged amount for the purpose of advancing the same to accused. Accordingly, presumption u/s 139 of the Act cannot be drawn against accused in view of the ruling of Hon'ble Supreme Court in ***John K. Abraham Vs Simon C. Abraham and another, 2014(1) Civil Court Cases 001 (SC).***

...16. The complainant has not approached the court with clean hands. His conduct is not that of a prudent man. Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. Not only no document had been executed, even no interest had been charged. It would be absurd to form an opinion that despite knowing that the respondent even was not in a position to discharge his burden to pay instalments in respect of the prised amount, an advance would be made to him and that too even after institution of three civil suits. The amount advanced even did not carry any interest. No oral evidence has been adduced to proving giving of loan.

17. Thus, from all these facts, it is clear that complainant has failed to prove the advancement of loan to accused and the issuance of cheque in question to discharge that liability, however, accused has succeeding in rebutting the presumption u/s 139 of the Act.

18. Accordingly, from the above mentioned discussion and the testimony of complainant and other evidence on record, it has not been proved that accused has took loan of Rs.1,50,000/- from complainant and in discharge of this liability, accused has issued the cheque in question in favour of complainant, which returned back dishonoured on presentation due to insufficiency of funds. Thus, it has not been proved by the complainant that all the ingredients of Section 138 of the Act are attracted and cheque in question was issued to discharge this legally enforceable liability.

19. Therefore, in view of the above discussion, it is held that the complainant has failed to prove that the cheque in dispute had been issued in discharge of due legal liability and was for consideration. Therefore, the accused Jagjit Singh has become entitled to the benefit of doubt and he is acquitted from the notice served upon him. His bail bonds and surety bonds stand discharged. After due compliance, the file be consigned to the Record Room."

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.

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 applicant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 02.01.2018 passed by learned Judicial Magistrate Ist Class, Batala.

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 02.01.2018 passed by learned Judicial Magistrate Ist Class, Batala is upheld.

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

January 24, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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