

2023:PHHC:165100 CRM-A-1298-MA-2018

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

CRM-A-1298-MA-2018

Date of Decision: November 30, 2023

KANWAR BHAN TANEJA

....Applicant-Appellant

Versus

MRS. JAYSHREE TANEJA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Hitesh Sharma, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant application under Section 378(4) CrPC is preferred against judgment of acquittal dated 07.05.2018 passed by Additional Chief Judicial Magistrate, Rewari in criminal complaint dated 21.05.2016 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter NI Act).

2. The facts, in brief, are that respondents no. 1 and 2-accused took a friendly loan of Rs. 3,50,000/- from the petitioner-complainant, with a promise to repay the same in 18 months. Respondent no. 1 and 2-accused executed a promisory note dated 10.07.2014 at the time of obtaining the said loan amount. To discharge their liability, the respondents-accused issued a cheque bearing No. 155850 dated 18.04.2016 for Rs. 3,50,000/- in favour of the petitioner. On presentation for encashment, the cheque was dishonoured vide memo dated 22.04.2016 with remarks 'funds

insufficient.’ Thereafter, a legal notice dated 27.04.2016 was served upon the respondents-accused. However, the respondents-accused failed to make the payment and a criminal complaint was lodged against them under Section 138 of the NI Act.

3. On the basis of material available on record, the accused were summoned. On finding a *prima facie* case against the accused, a notice of accusation was served upon them for the commission of an offence under Section 138 of the NI Act, to which they pleaded not guilty and claimed trial. Subsequently the accused were acquitted vide the impugned judgment dated 07.05.2018.

4. Learned counsel for the applicant-appellant contends that the defence of the accused that the cheques were given as security is in itself an admission that the signatures on the cheque are indeed of the respondents-accused. Further, PW1-applicant-appellant in his duly sworn affidavit has verified that the petitioner had given the said amount as loan to the respondents-accused. As such, the learned trial Court has fell into error while appreciating the evidence on record and the provisions of the NI Act.

5. Having heard the learned counsel for the appellant-applicant and after perusing the record with his able assistance, I am of the view that the applicant-appellant has not been able to indicate any perversity in the impugned judgment.

6. The NI Act creates a presumption in favour of the prosecution in terms of Section 118 and 139. The same are reproduced as under:

Section 118: Presumptions as to negotiable instruments.

Until the contrary is proved, the following presumptions shall be made:--

(a) of consideration:-- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

Section 139: Presumption in favour of holder

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

7. It is no longer res integra that these presumptions are of a rebuttable nature. While, the onus to prove the guilt of the accused rests on the prosecution, once the facts required to form the basis of these presumptions in law exist, the Court is duty bound to draw the conclusion as stipulated by the statute. However, the accused is not barred from presenting evidence in his defence. The accused is only required to raise a probable defence casting a doubt on the existence of consideration which he can do by adducing direct evidence, circumstantial evidence or even on the basis of presumptions of law or fact. Furthermore, if he can explain the circumstances that would indicate his innocence, it is not mandatory for the accused to adduce evidence as the material available on record itself can be looked at from a new perspective. Thereafter, the burden shifts back to the prosecution to reply and to negate the rebuttal made by the accused. The standard of proof in an offence under the NI Act is that of civil proceedings i.e. preponderance of probabilities. Since the burden of proof

on the accused is not as heavy as the prosecution, he is not required to disprove the entire prosecution case.

8. A two Judge bench of the Hon'ble Supreme Court in *M.S. Narayana Menon alias Mani v. State of Kerala and Another* 2006(6) SCC 39, speaking through Justice S.B. Sinha, observed as follows:

"45. In Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 Supreme Court 1316], Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether burden of proof in terms of Section 118 had been discharged or not, relevant evidence cannot be permitted to be withheld. If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced might have gone unfavourable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the Act stating:

"...Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

9. A perusal of the record indicates that the complainant-applicant deposed before the trial Court as PW1 and in his cross-examination, he admitted that he loaned Rs. 3,50,000/- to the respondents-accused on 10.07.2014 and that it was the only time this amount was loaned by him to them. Respondents-accused have taken a specific defence that they had borrowed Rs. 3,00,000/- from the applicant-appellant in the

year 2009-2010 and as a security, the latter had asked them to deposit 5-6 signed blank cheques and signed blank papers to him. Thereafter, the respondents-accused returned the loan amount to the applicant-appellant in installments – Rs. 1,72,000/- on 03.03.2011, Rs. 2,50,000/- on 11.05.2011, Rs. 65,000/- on 10.08.2011 and Rs. 3,000/- on 10.12.2011 and the same has been recorded in writing (Ex. D2). Therefore, this Court is of the view that the respondents-accused have been successful in rebutting the presumptions under Section 118 and 139 of the NI Act.

11. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (**See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

12. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

13. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out

any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

(HARPREET SINGH BRAR)
JUDGE

30.11.2023
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>