

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

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CRM-A-996-2019 (O&M)
Date of Decision: 08.02.2023

MS. BINDIYA KHINDRI

... Appellant

VERSUS

JYOTI MEHRA

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sourabh Arora, Advocate
for the appellant.

SANDEEP MOUDGIL, J. (ORAL)

CRM-17806-2019

Prayer in this application under Section 5 of Limitation Act, 1963
is for condonation of delay of 55 days in filing the appeal.

Keeping in view the reasons mentioned in the application, the
same is allowed and delay of 44 days in filing the appeal is condoned.

CRM stands disposed of.

CRM-A-996-MA-2019

By filing the present appeal, under Section 378(4) Cr.P.C. the
appellant has assailed the judgment dated 16.10.2018, passed by the Judicial
Magistrate Ist Class, Amritsar, dismissing the complaint and acquitting the
respondent-accused therein of the notice of accusation served upon him under
Section 138 of the Negotiable Instruments Act (for short 'the Act').

It is contended that the judgment passed by the trial Court suffers
from grave illegality, perversity and the same is based upon surmises and
conjectures and as such the same is liable to be set aside. It is further contended

that the respondent-accused has taken a specific plea in his statement under Section 313 of the Cr.P.C., wherein he has stated that his cheque was misused by the applicant-appellant. However, the respondent-accused utterly failed to prove his defence before the trial Court by leading any convincing and/or clinching evidence. Furthermore, the trial Court has dismissed the complaint only on the ground that the complainant failed to prove friendly relation between her and the accused, which fact does not fall within the ingredients required to prove the offence under Section 138 of N.I. Act, 1881. The trial Court even failed to consider that the respondent-accused has bitterly failed to rebut the presumption under Section 139 of the N.I. Act, 1881. Hence, the impugned judgment is liable to be set aside.

Heard.

While acquitting the respondent-accused, the learned Judicial Magistrate has recorded that there the complaint in question had been filed through Special Power of Attorney of the complainant, however, upon cross-examination, the said SPA even failed to depose about the residential address of the complainant i.e. the executor of the SPA. He even did not tell that in whose presence the said SPA was executed. He further miserably failed to prove on record any knowledge about the transaction between the complainant and the accused, or where and in which manner the transaction in question took place. He has specifically deposed in his cross-examination that “he cannot produce any documentary proof to show any outstanding amount against the accused i.e. the respondent herein.” Perusal of same clearly shows that the applicant-appellant has not led any convincing evidence which could show that the cheque in question had been issued in discharge of any legally enforceable debt. This alone aspect is sufficient to smash the case of the applicant-appellant.

Furthermore, the onus to prove liability of the respondent-accused was upon the complainant but she has miserably failed to prove the same. Even the complainant herself did not step into the witness box to prove her case. On the contrary, the SPA specifically deposed that he is unable to produce the complainant in the Court, even if the Court directs to do so.

It is a settled law as held in **C. Antony v. K.G. Raghavan Nair, 2002(4) RCR(Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his 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.

On perusal of the judgment passed by the trial Court dated 16.10.2018, this Court is of the considered view that the said judgment well reasoned and is based upon proper appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or requiring any interference by this Court. The accused-respondent has been duly able to rebut the presumption under Section 139 of the N.I. Act, 1881 and as such, she has rightly been acquitted of the notice of accusation served upon her.

Accordingly, the leave to appeal stands declined.

Dismissed.

08.02.2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No