

220 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1660-MA-2016

DATE OF DECISION:-01.05.2023

Dharamveer

...Applicant.

Vs.

Dr. Vijay Kumar Sharma

...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Johan Kumar, Advocate,
for the applicant.

HARKESH MANUJA, J.

1. Present application has been filed under Section 378 (4) Cr.P.C., for grant of leave to appeal against judgment of acquittal dated 22.07.2016 passed by the Judicial Magistrate Ist Class, Gurgaon, whereby respondent has been acquitted of the charges under Section 138 of the Negotiable Instruments Act, 1881 (for short, "1881 Act").

2. Facts leading to the present case are that on account of dishonour of cheque bearing No.000006 dated 31.01.2015, amounting to Rs.3 lakh, respondent was arrayed as an accused in a criminal complaint bearing No.1134 dated 06.06.2015, titled as "*Dharamveer vs. Dr. Vijay Kumar Sharma*" filed under Section 138 of the Negotiable Instruments Act, 1881 (for short' "1881 Act").

3. In order to prove his case, complainant entered into the witness box and tendered his affidavit Ex.CW1/A along with documents Ex.C1 to Ex.C7. Thereafter, statement of respondent-accused was recorded under

Section 313 Cr.P.C., wherein, he denied the allegations and pleaded false implication.

4. On appreciation of evidence and after hearing arguments advanced by counsel for both the parties, the trial Court acquitted the respondent vide its judgment dated 22.07.2016. The present application for grant of leave to appeal against aforesaid judgment has been filed by raising various grounds.

5. Learned counsel for the applicant submits that the trial Court has totally ignored the fact that the respondent has admitted his signatures on the cheque in question and once the same has been admitted, the liability is also admitted. He further submits that the court below has also failed to appreciate the evidence placed on record by the applicant in the shape of affidavit of respondent as Ex.C1, in pursuance to which, he issued six cheques to discharge his liability and thus, wrongly acquitted the respondent.

6. Having heard the arguments advanced by learned counsel for the applicant besides having gone through the judgment passed by the trial Court and other documents available on the file, I am unable to find any substance in the submissions made on behalf of the applicant.

7. As per the version of applicant-complainant, cheque in question was issued by the respondent-accused, being signatory to the cheque and this fact has been admitted by him in his cross-examination, but in his affidavit, respondent-accused has stated that the cheque in question was misused by applicant-complainant, whereas, he has already received the payment and handed over the original agreement Ex.DW1/1 along with coloured copy of cheque in question, in which, he had written that he had

received the entire cheque amount as mentioned in the agreement. In order to establish the offence committed by the respondent-accused, applicant-complainant stepped into the witness box and tendered affidavit Ex.CW1/A, wherein, he reiterated the same version as mentioned in the complaint, however, during cross-examination, he deposed that he gave amount of Rs.10 lakh to the respondent-accused in the form of security at his hospital, whereas, in the complaint, he mentioned that the respondent-accused was to pay consideration amount of Rs.10 lakh for running the medical store. Moreover, in his complaint, applicant-complainant did not even mention that he received any payment of 6 lakh from the respondent, but in his cross-examination, he admitted the receipt of payment. More importantly, respondent-accused examined DW2 Hansraj, Manager, who stated that the respondent-accused paid Rs.3 lakh in cash to the applicant-complainant in lieu of cheque in question and thereafter, in his presence, applicant-complainant after taking the payment handed over original affidavit wherein he mentioned that he had received entire payment from the respondent-accused.

8. In view of the aforementioned observations, I do not find any illegality or perversity in the judgment of acquittal passed by the trial Court. In **“Arulvelu & another v. State represented by the Public Prosecutor & another”**, reported as 2009(4) RCR (Criminal) 638, the Hon’ble Supreme Court has laid down the following guidelines for the appellate court while dealing with cases where trial court acquitted the accused:-

"1. The accused is presumed to be innocent until proved 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 demeanor 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.*
6. *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.*
7. *The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*

9. In the light of aforesaid guidelines, I have examined the judgment of the trial Court and the reasoning given by it for the acquittal of the respondents. In the facts and circumstances of the present case and based on the evidence available on record, the trial Court, after properly appreciating the evidence, has rightly come to the conclusion that the complainant has failed to prove the case against the respondent beyond all reasonable doubts. The view taken by the trial Court is not in any way unreasonable, perverse or impossible, rather, in the facts and circumstances of the case and the

evidence led by both the parties, no second view is possible and plausible. The trial Court has rightly held that the payment qua cheque in question has already been made to the complainant by the respondent and as per agreement Ex.DW1/1, the applicant has admitted having received the entire payment qua cheque mentioned in the agreement.

10. In view of the discussion made herein above, there being no illegality or perversity in the reasoning recorded by the trial Court, I do not find any ground to grant leave to appeal against its judgment dated 22.07.2016. Hence, the present application is dismissed.

01.05.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No