

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

CRM-A-196-MA-2018
Date of Decision: 10.04.2023

RAM SINGH

...Applicant

Versus

SURAJ SINGH

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashish Tewatia, Advocate
for Mr. Mahendra Singh Tewatia, Advocate
for the applicant.

HARSH BUNGER, J. (Oral)

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 16.11.2017 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby, the criminal complaint filed by the applicant/complainant under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act'), has been dismissed and respondent/accused (Suraj Singh) has been acquitted of the offence under Section 138 of the N.A. Act.

2. Brief facts of the case are that the applicant-complainant has filed a complaint under Section 138 of the N.I. Act against the respondent-accused, wherein it was alleged that the complainant had advanced an amount of Rs.10 lacs to the respondent-accused as earnest money in pursuance of an oral agreement of sale in respect of a plot measuring 100 Sq. yards, situated within the revenue estate of Village Agwanpur, Faridabad; wherein, the total sale consideration was Rs.12 lacs. It was alleged that in admission of his liability, the respondent-accused issued a cheque bearing No.171360 dated 15.04.2015 for an amount of Rs.2,50,000/- drawn on 'ICICI Bank' in discharge of part liability. It was

alleged that when the said cheque was presented for encashment, the same was returned dishonoured with the remarks '*Funds Insufficient*' vide bank return memo dated 28.04.2015. Consequently, the applicant-complainant issued a legal notice dated 11.05.2015 to the respondent-accused. However, since the payment was not made within the stipulated period; accordingly, the aforesaid complaint was filed.

3. After the preliminary evidence, the respondent-accused was summoned to face trial and he was served with notice of accusation under Section 138 of the N.I. Act on 04.02.2016, to which, he pleaded not guilty and claimed trial.

4. In evidence, the applicant-complainant examined himself as CW-1 and tendered the following documents :-

<i>Sr. No.</i>	<i>Exhibits</i>	<i>Documents</i>
<i>1</i>	<i>Ex. C1</i>	<i>Cheque in question dated 15.04.2015</i>
<i>2</i>	<i>Ex. C2</i>	<i>Cheque return memo dated 28.04.2015</i>
<i>3</i>	<i>Ex. C3</i>	<i>Legal Notice dated 11.05.2015</i>
<i>4</i>	<i>Ex. C4</i>	<i>Postal receipt dated 13.05.2015</i>
<i>5</i>	<i>Ex. D1</i>	<i>Copy of account statement of complainant from 22.4.2015 to 30.6.2017</i>

5. Thereafter, the plea of defence of the respondent-accused under Section 263(g) of the Code of Criminal Procedure was recorded; wherein, he denied his liability towards the applicant-complainant. The respondent-accused admitted that he borrowed an amount of Rs.50,000/- at the interest rate of 3 percent per month and issued a blank signed cheque as security. Subsequently, as per the respondent-accused, he made the entire repayment of Rs.50,000/- along with interest but the applicant-complaint

did not return the security cheque and mis-used the same. The respondent-accused denied receiving of the legal notice.

6. As per the impugned judgment, the respondent-accused opted to cross-examine the applicant-complainant by filing an application under Section 145(2) of the N.I. Act; accordingly, the cross-examination of the applicant-complainant was conducted. The respondent-accused did not lead any evidence in his defence and the evidence of the respondent-accused was closed by Court order.

7. The trial Court, after appreciating the evidence on record, acquitted the respondent-accused of the notice of accusation served upon him vide judgment dated 16.11.2017. Accordingly, the present application for grant of leave to appeal has been filed before this Court.

8. I have heard learned counsel for the applicant/complainant and gone through the impugned judgment dated 16.11.2017 passed by learned Judicial Magistrate Ist Class, Faridabad.

9. Recently, in ***Criminal Appeal No. 1904 of 2014, Roopwanti v. State of Haryana (Decided on 24.02.2023)***, reported as ***2023(3) Scale 323***, Hon'ble Supreme Court of India, has held as under: -

“7. In cases where a reversal of acquittal is sought, the courts must keep in mind that the presumption of innocence in favour of the accused, on grounds of it surviving the rigours of a full trial, is strengthened and stands fortified. The prosecution then, while still working under the same burden of proof, is required to discharge a more onerous responsibility to annul and reverse the fortified presumption of innocence. This fortification of the presumption of innocence has been held in a catena of judgments by this court.

8. In the case of Allarakha K. Mansuri v. State of Gujarat 2002(1) RCR(Criminal) 748, this Court has

held that in cases of reversal of acquittal, where two views are possible, the view which favors the accused has to be adopted. For the sake of Convenience, the relevant paragraph of the judgment is being produced hereunder:

"The settled position of law regarding the powers to be exercised by the High Court in an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

*9. Further, in the case of **Suman Chandra v. Central Bureau Of Investigation Criminal Appeal No.1645 of 2021** wherein the acquittal of the accused was challenged, this court held that while exercising its powers to reverse an acquittal, the order of the trial court must not only be erroneous, but also perverse and unreasonable. The relevant paragraph of the judgment is being extracted herein:*

"It is well settled law that reversal of acquittal is permissible only if the view of the Trial Court is not only erroneous but also unreasonable and perverse. In our considered opinion, the view taken by the Trial Court was a possible view, which was neither perverse nor unreasonable, and in the facts

and circumstances of the present case, ought not to have been reversed or interfered with by the High Court."

*10. Similarly in the case of **Mrinal Das & Others v. The State of Tripura 2011(9) SCC 479**, this Court held that interference in a judgment of acquittal can only be made if the judgment is "clearly unreasonable" and there are "compelling and substantial reasons" for reversing the acquittal. The relevant paragraph of the judgment is being reproduced herein:*

"An order of acquittal is to be interfered with only when there are "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".

11. As can be seen from the above-mentioned judgments, an additional layer of protection is granted to an accused in cases where the accused already enjoys an acquittal. In the present case, we are in agreement with the decision of the High Court. From a perusal of the judgment of the Trial Court, it can be seen that no perversity has been committed by the Trial Court while reaching its conclusion. All the evidence on record has been carefully perused and a detailed analysis has been carried out to come to the conclusion.

12. In such circumstance, we find no reason to interfere with the decision of the Trial Court as well as the High Court."

10. Coming to the case in hand, the learned trial Court, after considering and appreciating the evidence available on the record, observed as under:-

“11. The complainant has come with the premise that an oral agreement to sale for a plot of 100 Sq. yards had occurred with the accused in total sale consideration of Rs.12,00,000/- and complainant advanced earnest money of Rs. 10,00,000/- in pursuance of such agreement. The agreement could not materialize and subsequently, for part repayment of such amount, accused had issued the cheque in question which was returned dishonored on its presentation. Whereas, accused has come with the defence that the material contradictions in the cross-examination of complainant are sufficient to establish that the version stated by the complainant is false and improbable. To raise the statutory presumption that the cheque issued by the accused is for consideration, it was imperative on the complainant to divulge the true nature of transaction and be categorical about the distinctive particulars of such transaction viz. the date of advancement of earnest money, date of entering into agreement to sale and its particulars, date of issuance of cheque etc. which all are the essential particulars required to be deposed before alleging the commission of offence under section 138 of the Act. As well the complainant is also indispensably obliged to unveil the source of money.

12. A thorough intellection of the deposition of complainant as CW-1 shows that the complainant neither in the complaint nor in his affidavit of deposition has disclosed the exact date of entering into agreement to sale nor there is

narration of the fact that when the alleged earnest money of Rs.10,00,000/- was paid to the accused person. Similarly, there is no mention of the fact that when the impugned cheque was issued by the accused person. All these particulars which are essential to be disclosed to prove a case under section 138 of the Act, has not been disclosed in the present matter. Most importantly, the complainant could not account for the huge amount of money which he states to have advanced as earnest money...

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13. Complainant during his cross examination as CW-1 has put different and incongruous versions about the advancement of earnest money. In the opening part of cross-examination CW-1 stated that he advanced amount of Rs.10,00,000/- to the accused 4-5 years ago and after that, repeatedly changed his version about the year of advancement from year 2010 to year 2011 and to year 2012. Allegedly, such agreement to sale was entered orally but, no particulars of execution of such agreement were provided. Most importantly, there is no mention of date, month or year of execution of such agreement in complaint, legal notice or in the affidavit of deposition. This fact remained unexplained during the cross-examination of complainant. In the later part of cross-examination, complainant has stated that such amount of Rs.10,00,000/- was advanced to accused as a friendly loan for the period of 10-20 days. Similarly, the complaint, legal notice and affidavit of deposition are silent about date, month and year of issuance of cheque. Complainant as CW-1 stated that he cannot tell about the date, month and year of issuance of cheque nor he can tell

about the person who filled the cheque.

14. The another shortcomings in the deposition of the complainant is that he could not disclose the source of such a huge amount. CW-1 stated that he advanced the earnest money after withdrawing it from his bank account. Complainant also adduced copy of his bank statement, Ex.D1 but, there is no corresponding entry in the statement about the withdrawal of amount of Rs. 10,00,000/-. Complainant has nowhere explained about the source from where he generated such a huge amount. It has also not been explained that why he accepted the part payment of Rs.2,50,000/- only when there was actual outstanding of Rs.10,00,000/-.CW-1 stated that he did not initiate any action nor demanded the amount of Rs. 7,50,000/-.

To establish his financial capacity, complainant did not adduce any document or record. It is also admitted by witness that at the time of advancement of loan, he did not execute any loan agreement, pro-note, receipt or took any security for such advancement. It is further surprising that before such transaction the parties never had any transaction and such a huge amount was advanced without securing any security. Further, the witness stated that he does not remember the exact date of receiving of cheque from the accused person. Witness also showed his ignorance regarding the hand-writing present over the cheque...

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15. Having considered the evidence in proper perspective, in the light of relevant judgments, it is observed that CW-1 has stated that before lending such amount, he never had any

transactions with the accused. The complaint, the affidavit of complainant and moreover his deposition has remained inconspicuous about the date of entering into agreement to sale and date of advancement of earnest money as well about the issuance of cheque by the accused person. Further, there is intentional opacity about the source of loan amount, albeit, categorical question have been asked by defense during the cross-examination. The complainant is unmindful of even the personal details viz. place of residence of accused which, he is supposed to know as a friend. Further, the testimony of complainant is irreconcilable with the averments of complaint about the nature of loan. All these circumstances show that the transaction averred by the complainant is not authentic and is not supported by any corroborative evidence.

16. The complainant could not satisfy the requirement of law in discharging the onus, in the second instance, regarding the plea of accused of no liability or non-existence of legally enforceable debt. The allegations levelled by the complainant are vague and not corroborated by any document or evidence. On the contrary, version of accused seems more probable that the cheque was given by him as a security cheque regarding the borrowing of amount of Rs. 50,000/- only. It is a trite that even where the presumption under section 118 and 139 is available, the same can be rebutted on the basis of the cross examination of the witnesses of the complainant and the other material available on the record. As discussed above, the complainant has failed to discharge such shifted onus by leading any trustworthy testimony.

17. Therefore, as a result of discussion foregoing and in view of the settled proposition of

*law and considering the facts and circumstances of the present case, the accused deserves to be acquitted in this case. Hence, accused namely **Suraj Singh** stands acquitted of the offence under section 138 of Negotiable Instruments Act.”*

11. 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. Appellant-complainant had miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

12. 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 appellant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 16.11.2017 passed by learned Judicial Magistrate Ist Class, Faridabad.

13. No other argument was raised.

14. In view of the above discussion, the instant appeal is bereft of any merit and the same is accordingly dismissed. The judgment dated 16.11.2017 passed by learned Judicial Magistrate Ist Class, Faridabad is upheld.

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

April 10th, 2023
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No