

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

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**CRM-A-1990-MA-2018
Date of Decision: 15.05.2023**

CHANAN SINGH

... Appellant

VERSUS

JASWANT SINGH

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

SANDEEP MOUDGIL, J. (ORAL)

1. Through the present application under Section 378(4) Cr.P.C., the applicant-appellant invoking the jurisdiction of this Court has sought leave to appeal against the judgment dated 11.07.2018, passed by the Judicial Magistrate Ist Class, Batala, 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').

2. It is contended that the judgment passed by the trial Court suffers from grave illegality, perversity, impropriety and the same is based upon surmises and conjectures and as such the impugned judgment is liable to be set aside. It is further contended that the trial Court gave the benefit of doubt, while awarding the acquittal to the respondent-accused whereas the applicant-appellant (complainant) had led cogent and convincing evidence in

support of his allegations. It is further averred that great prejudice would be caused to the applicant-appellant in case the present application is not allowed and the applicant-appellant is not permitted to file appeal against the impugned judgment, while submitting that vide the impugned judgment, the trial Court erred in law for not taking into consideration that the respondent-accused had not denied his signatures on the cheque in question. He further argued that in such an event, it was for the respondent-accused to rebut the presumption drawn against him under Section 139 of the N.I. Act, 1881 urging that it is well settled position in law that once an accused admits his signatures on the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The counsel for the petitioner seeks indulgence to attract the presumption under Section 139 of the N.I. Act, 1881 in the present case, which is very strong in favour of the applicant-appellant, but in spite of that, it returned a finding of acquittal while dismissing the complaint in question and prayed for setting aside the impugned judgment dated 11.07.2018.

3. Heard.

4. I have perused the impugned judgment carefully and have also meticulously gone into the findings recorded by the trial Court. Upon perusal of the same, I do not find any perversity or illegality therein. It is not a disputed fact that in order to bring home the guilt under Section 138 of the N.I. Act, 1881 the complainant has to prove the mandatory procedure which is to be adopted before filing a complaint under Section 138 of the N.I. Act, 1881. The service of a valid legal notice is one of such essential ingredients of the said procedure. A perusal of the impugned judgment shows that the

complainant has not been able to prove the legal notice allegedly served upon the respondent-accused. In order to prove the legal notice, either the counsel through whom the legal notice had been sent or the Clerk of said counsel has to be brought into the witness box, which the applicant-appellant (complainant) utterly failed to do so. Proper and prompt service of legal notice upon the respondent-accused is a mandatory and inevitable condition of law to complete the chain of proceedings for filing a complaint under Section 138 of the N.I. Act. However, in the present case, the complainant has not been able to complete the chain of proceedings and hence, the finding returned by the learned trial Court does not suffer from any illegality, perversity of impropriety.

5. Once the essential ingredients of Section 138 of the N.I. Act, 1881 are not proved, the presumption under Section 139 of the N.I. Act cannot ordinarily be drawn against any persons and in such an event, the question of rebutting the same does not arise at all. As such the judgment of acquittal has rightly been passed by the learned Court below.

6. 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.

7. On perusal of the judgment passed by the trial Court dated 11.07.2018, this Court is of the considered view that the said judgment

is 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.

8. Accordingly, the application seeking leave to appeal against the impugned judgment stands declined.

9. Dismissed.

15.05.2023
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(SANDEEP MOUDGIL)
JUDGE

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