

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-3994-2017 IN/AND

CRM-A-159-MA-2017

Date of decision: 11.01.2023

Rajo Devi

....Appellant

Versus

Nafe Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Pinki Mehla, Advocate for
Mr. Pawan Attri, Advocate for the appellant.

Mr. D. S. Nain, Advocate for the respondent.

AMAN CHAUDHARY. J.

CRM-3994-2017

Having heard the learned counsel for the parties and in view of the reasons stated in the application, the same is allowed. Delay of 387 days in filing the application for leave to appeal is hereby condoned.

CRM-A-159-MA-2017

Present appeal has been filed against the judgment dated 04.11.2015 passed by the Judicial Magistrate 1st Class, Kaithal whereby the complaint filed by the appellant/complainant under Section 138 of the Negotiable Instruments Act, 1881, (for short 'NI Act') against the respondent/accused has been dismissed and the respondent/accused was acquitted in complaint case No. RBT-53 of 2013.

Briefly put, the facts of the case are that the appellant had advanced a loan to the accused, who had assured that he would repay the same. In the month of November, 2012, the accused had given a cheque bearing No. 197077 dated 15.01.2013 for a sum of Rs.3,80,550/- in favour of the complainant-appellant,

which on presentation, got dishonored with the remarks “Insufficient Funds” vide memo dated 07.03.2013. Thereafter, the complaint was filed wherein, the accused-respondent was summoned. The appellant had examined herself and tendered the documentary evidence. Thereafter, the trial Court considering the evidence led by the parties, passed the judgment dated 04.11.2015 whereby the complaint filed by the appellant was dismissed and the accused-respondent was acquitted.

Hence the present appeal.

Learned counsel contends that the the trial Court has committed an error while dismissing the complaint without properly appreciating the facts of the case and the evidence. There was sufficient material on record in shape of statement of CW-1, Suresh Kumar, Assistant SBI, CW-2 Bhagwan Dass, Deputy Manager, SBI and the affidavits of the complainant and CW-4, Ram Kishan as Ex.CW3/A and CW4/A, to hold the respondent guilty.

I have heard learned counsel for the parties.

In **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra**, 2011 (1) RCR (Criminal) 57, Hon’ble The Supreme Court framed the guidelines for the appellate court to deal with the matter of “appeal against acquittal”, which read thus:-

“Appeal against Acquittal:

22. It is a well-established principle of law, consistently reiterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the

view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: Balak Ram & Anr. v. State of U.P., AIR 1974 SC 2165; Shailendra Pratap & Anr. v. State of U.P., AIR 2003 SC 1104; Budh Singh & Ors. v. State of U.P., AIR 2006 SC 2500; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors., AIR 2008 SC 2066; Arulvelu & Anr. v. State, (2009) 10 SCC 206; Ram Singh alias Chhaju v. State of Himachal Pradesh, (2010) 2 SCC 445; and Babu v. State of Kerala, (2010) 9 SCC 189)."

It would be relevant to make a reference to the judgment of the learned trial Court vide which the complaint was dismissed by observing thus:

"The accused although admitted his signatures upon the said cheque but as per his version his cheque book, bank passbook

and another necessary documents were taken away by Reena, the daughter of complainant, and Ex wife of the accused between 3.7.2012 to 8.7.2012 and in this regard he also made a complaint to police station and accordingly his application dated 28.8.2012 was marked by the S.P. concerned to the DI, Kaithal for further action. To substantiate aforesaid version the accused got examined DW2 Ashok Kumar who was posted as District Inspector in the year 2012 and he proved that the said complaint dated 28.8.2012 filed by the accused before the police officials was marked to him for the purpose of investigation and he proved its copy Ex. DB. He also proved the statement of accused Nafe Singh and complainant Rajo Devi during the aforesaid investigation. I have also gone through the complaint dated 28.1.2012 Ex. DB and from the bare perusal of contents of the aforesaid application, it is clear that accused has specifically averred in the aforesaid application that on 7.8.2012 when he reached at his room in Sood Hospital, he came to know that his wife Reena has taken away his necessary documents including ration card passbook and cheque book etc. Thus, from the aforesaid evidence, the contentions of the accused are seems to be genuine and there may be a possibility that Reena the Ex wife of accused has actually misappropriated the alleged cheque of the accused.”

Learned counsel for the appellant has not been able to point out any illegality or infirmity in the aforesaid findings as returned by the learned trial Court. Moreover, The learned trial Court after appreciating the evidence on record and after an elaborate consideration of the case put forth by the complainant as well as the accused came to a correct conclusion that the defence had discharged its duty in rebutting the statutory presumption as envisaged by the provisions of

NI Act. This Court finds no compelling and substantial reason to interfere with the order of the acquittal recorded by the trial Court. Resultantly, the present application for grant of leave to appeal being bereft of merit is dismissed.

(AMAN CHAUDHARY)
JUDGE

January 11, 2023
Mehak

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