

2023:PHHC:109559

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.235

CRM-A-2623-MA-2018
Date of decision:08.08.2023

Manjit Kaur

...Applicant

Versus

Shalinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. G.S. Nahel, Advocate,
for the applicant.

N.S. SHEKHAWAT, J.

1. The present applicant has filed the present application under Section 374 Cr.P.C. with a prayer to grant leave to appeal against the impugned judgment dated 15.09.2018 passed by the learned Judicial Magistrate 1st Class, Patiala, whereby the respondent was acquitted of notice of accusation under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act').

2. As per the allegations leveled by the applicant/complainant in the complaint filed under Section 138 of the NI Act that the respondent/accused had entered into an agreement to sell with the applicant on 20.08.2014 and the agreement was scribed on non-judicial stamp paper of Rs.2000/-. A sum of Rs.7 lacs was paid by the applicant as an earnest money to the respondent, in the presence of the witnesses. In the said agreement to sell, it was promised by the respondent/accused that the co-sharers of the land, who were also the close relatives of the applicant would

execute a sale deed in favour of the applicant/complainant on 30.10.2014 after receiving the balance sale consideration. However, the respondent executed the sale-deed of his share in favour of his co-sharer Balbir Kaur on 19.09.2014 vide a registered sale-deed, prior to the date of execution of the sale deed in favour of the applicant, as agreed between the parties vide agreement to sell dated 20.08.2014. When the applicant came to know about the said fact, she along with her husband and marginal witnesses of the agreement to sell met the respondent/accused and apprised him about his illegal act. Later on, the matter was compromised between the parties with the intervention of the common friends and on 28.12.2014, the respondent issued two post dated cheques, i.e. cheque No.176588 dated 15.03.2015 and cheque No.176587 dated 15.06.2015 for a sum of Rs.2.50 lacs each with the assurance that the cheques will be cleared on presentation. On 15.03.2015, the respondent told the applicant to present the cheque bearing No.176588, for a sum of Rs.2.50 lacs, however the cheque was returned unpaid with the remarks 'account closed on 13.10.2012' vide memo dated 29.04.2015. Another cheque was also presented and the same was also returned with the same remarks. A legal notice dated 16.06.2015 was served by the applicant through his counsel, calling upon the respondent to make the payment within a stipulated period. However, the respondent failed to make the payment in spite of legal notice and the applicant was constrained to file the complaint under Section 138 of the NI Act.

3. Learned counsel for the applicant vehemently argued that the complainant had appeared as CW-1 and clearly stated that the respondent had borrowed a sum of Rs.7 lacs as an earnest money in the presence of marginal witnesses of the agreement to sell for the sale of land. However,

the respondent executed the sale deed of his share also in favour of his co-sharer Balbir Kaur vide registered sale deed on 19.09.2014, prior to the date of execution of sale deed in favour of the applicant, in order to cheat the complainant. When this fact came to the notice of the parties, the dispute was resolved and the respondent had issued two cheques of Rs.2.50 lacs each. Learned counsel contended that the respondent/accused had nowhere denied his signatures on the cheque in question and the legal presumption under Section 139 of the NI Act was there in favour of the applicant and the impugned judgment is liable to be set aside. Learned counsel further submitted that the plea raised by the defence under Section 313 Cr.P.C. was without any basis and no evidence could be led by the respondent to rebut the presumption. She further contended that the evidence led by the applicant had conclusively proved that the cheque in question was issued in discharge of the debt in pursuance of the settlement between the parties.

4. I have heard learned counsel for the applicant at length and perused the record.

5. In order to prove the charge against the respondent, the applicant-complainant had herself appeared as CW-1 and also placed on record the copy of agreement Ex.CI and attested copy of agreement dated 18.12.2014 as Ex.C-3. However, the learned trial court has rightly held that the entire case of the applicant/complainant was based on agreement to sell Ex.C-1 and on the agreement to pay back the money Ex.C-3. However, none of these original agreements were proved on record by the applicant, as per the provisions of the Evidence Act. Since original agreements had not been placed on record, it was correctly held that the best evidence had been withheld by the applicant for the reasons best known to her. Further, the

learned trial Court was perfectly justified in observing that the **very** transaction giving rise to the legally enforceable debt had not been proved on record. There is no force in the contention raised on behalf of the applicant that the presumption under Section 139 of the NI Act also comes into play in the facts of the present case. In fact, when the transaction giving rise to the legally enforceable debt has not been proved on record, the presumption under Section 139 of the NI Act cannot be raised. In the present case, the applicant had miserably failed to prove the very basis of the transaction between the parties. Further, the trial court has rightly observed that the applicant/complainant had only placed on record the attested copies of the original agreements, which were not admissible as per the provisions of the Evidence Act. Apart from that, CW-2 Karamjit Singh clearly stated that even though he was the witness to the agreement to sell, but he did not identify the persons, who signed the agreement nor he knew as to who signed the agreement in his presence. This fact alone renders the entire transaction to be dubious and unbelievable. Even otherwise, I have carefully perused the findings recorded by learned trial Court and find no reasons to deviate from the same.

6. It has been held by the Hon'ble Supreme Court in the matter of ***“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228*** as follows:-

“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as

expressed in Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 - "The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

7. From the above referred discussion, it is evident that there is no illegality or perversity in the impugned judgment dated 15.09.2018 passed by the learned Judicial Magistrate 1st Class, Patiala and the same is liable to be upheld. Apart from that, the prosecution has miserably failed to prove

any factual or legal error in the assessment of evidence made by the learned trial Court, insofar as the acquittal of respondent / accused is concerned.

8. In view of the above, the impugned judgment is ordered to be upheld and the present application is hereby dismissed, being devoid of any merits.

08.08.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO