

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

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CRM-A-312-MA-2018 (O&M)

Date of decision: 01.05.2023

Surjit Singh

....Appellant

Versus

State of Haryana and Anr

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Abhishek Yadav, Advocate for the appellant

AMAN CHAUDHARY. J.

CRM-4501-2018

For the reasons stated in the application, same is allowed. Delay condoned.

CRM-A-312-MA-2018

1. The present application for leave to appeal has been filed against the impugned judgment dated 26.10.2017 passed by learned Judicial Magistrate First Class, Karnal whereby respondent No.2 had been acquitted of the charge framed against him under Section 138 NI Act.
2. Facts that emerge from the complaint are that accused-respondent No.2 was known to the appellant and an amount of Rs.12 lakhs was lent in the presence of one Renu Bala, in the month of October 2015, for three months, by him for improvement of his business. However, accused-respondent No.2 failed to repay the said amount within the agreed time period. In discharge of his legal

liability, a cheque amounting to Rs.12 lakhs was issued in favour of the complainant-appellant. On presentation, the same was returned by the bank vide memo dated 11.02.2016, with remarks “payment stopped by drawer”. Despite issuance of legal notice dated 09.03.2016 on accused-respondent No.2, the amount was not paid to the complainant, leading to filing of the complaint.

3. On the basis of the preliminary evidence led by the complainant-appellant and after finding sufficient grounds, accused-respondent No.2 was summoned and notice of accusation was served upon him on 16.12.2016 for the commission of offence punishable under section 138 of Negotiable Instrument Act, to which he pleaded not guilty and claimed trial.

4. The complainant-appellant was examined as CW1 and he tendered his affidavit Ex.CW1/A reiterating the averments made in the complaint. Renu Bala was examined as CW2 and tendered her affidavit Ex.CW2/A in her evidence.

5. The statement of accused under Section 313 Cr.P.C. was recorded, to which he pleaded his innocence and alleged his false implication.

6. After evaluating the evidence led by the parties, the learned trial Court acquitted the accused-respondent vide judgment dated 07.03.2018.

7. Hence the present application for leave to appeal.

8. Learned counsel for the applicant had contended that the trial Court committed grave error while acquitting the accused-respondent without appreciating the facts and circumstances of the case. It is proved on record that accused-respondent had taken a friendly loan from the applicant and to discharge his liability, he issued the cheque in question and his signatures thereon were admitted.

9. On the other hand, learned counsel for the respondent submitted that the complainant could neither prove the loan transaction nor his capacity to advance the loan. Thus, the learned trial Court rightly acquitted the respondent. He has placed reliance on the judgment passed by Hon'ble The Supreme Court in the case of **Rajaram S/o Sriramulu Naidu (Since Deceased) through LRs vs. Maruthachalam (Since deceased) through LRs**, 2023 SCC OnLine SC 48.

10. Heard.

11. In **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra**, (2010) 13 SCC 657, Hon'ble The Supreme Court has framed the guidelines for the appellate court to deal with the matter of "appeal against acquittal", which read thus:-

“Appeal against Acquittal:

38. 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.

39. 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.

40. 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)."

12. It is apposite to make a reference to the order passed by the trial Court, wherein it has been specifically recorded that no specific date of demand of loan by the accused-respondent was mentioned in the complaint. No cogent and convincing evidence was produced by the applicant regarding advancement of the loan amount. Still further no ITR or any written agreement or any other evidence could be produced reflecting the alleged loan amount. Learned counsel for the applicant has not been able to demonstrate any illegality or perversity in the judgment of the trial Court.

13. In **Rajaram S/o Sriramulu Naidu** (supra), Hon'ble The Supreme Court found that the High Court was not justified in reversing the order of acquittal of the appellant. The trial Court had found that it was highly doubtful that the complainant had lent the money to the accused as in the income tax return of the complainant the said fact was not disclosed and his declared income was not sufficient to give loan of Rs.3 lakh. It was observed that the defence raised by the

appellant satisfied the standard of “preponderance of probability”. The scope of interference in an appeal against acquittal is limited. Unless the High Court found that the appreciation of the evidence is perverse, it could not have interfered with the finding of acquittal recorded by the learned Trial Court.

14. Applying the aforesaid exposition of law to the facts of the present case and also finding the judgment of the trial Court neither perverse nor illegal, the present application for seeking leave to appeal is dismissed being bereft of merit.

(AMAN CHAUDHARY)
JUDGE

01.05.2023
S.Sharma(syr)

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