

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

109

CRM-A-387-MA-2018 (O&M)

Date of Decision: 12.09.2023

Surjeet Singh

...Applicant

Vs.

Surjan Singh

...Respondents

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

Present : Mr. Sandeep Singh, Advocate
for the applicant.

N.S.SHEKHAWAT, J. (Oral)

CRM 5475of 2018

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 481 days in filing application for special leave to appeal.

2. I have heard the learned counsel for the applicant and perused the record.

3. For the reasons mentioned in the application, the delay of 481 days in filing the application for special leave to appeal is ordered to be condoned.

CRM-A-387-2018

1. The applicant/appellant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant leave to appeal

against the impugned judgment dated 04.10.2017 passed by Judicial Magistrate 1st Class, Assandh, Karnal, whereby, the respondent was ordered to be acquitted of the notice of accusation.

2. As per the case of the applicant/complainant, the respondent/accused had agreed to do the work as a labourer in the fields of the applicant during the year 2014 and 2015 and in lieu of the work done by him, the applicant had given all the payments in advance to the respondent. However, the respondent requested the applicant to give a loan of Rs. 1,40,000/- with interest at the rate of 2% per month to the respondent. The applicant paid the said amount to the respondent and the respondent agreed to return the said amount within a period of six months. However, the respondent even did not do agricultural work in fields of the applicant even for a single month. The applicant demanded the part of the said amount alongwith interest from the respondent, but he started putting off the matter on the one pretext or the other. In January 2015, the applicant had raised the demand of above said amount from the respondent but the respondent ultimately issued cheque bearing No.0648771 dated 02.02.2015 for a sum of Rs. 1,55,000/-. The respondent assured the applicant that as and when the said cheque would be presented in his account, it will be encashed. Ultimately, the applicant presented the said cheque for calculating the amount and same was returned back with the remarks “funds insufficient” on 07.03.2015. The respondent

had issued the above said cheque to the applicant for discharge of legal liability and enforceable debts and was aware of the fact that the amount mentioned in the cheque was not lying in his account. Thereafter, a statutory legal notice was got issued by the applicant and still no payment was made by the respondent. Learned counsel for the applicant submitted that the trial Court had not appreciated the evidence on record and wrongly dismissed the complaint. In fact, the cheque in question was issued by the respondent and the same was bearing the signatures of the respondent. Thus, the presumption under Section 139 of the Act would arise in favour of the petitioner. Once the presumption under Section 139 of the Act is raised, it is for the respondent to rebut the presumption. He further contends that the respondent had not taken a plea that he had not issued the cheque in question. Apart from that, learned counsel for the applicant had also relied upon the fact that the respondent had borrowed a sum of Rs. 1.40 lacs in advance at the interest rate of 2 % per month. Still further, in the agreement Ex.C11, it was mentioned that another agreement dated 19.08.2014 was executed on the stamp papers brought by the respondent. The respondent could not give any explanation in order to rebut the contents of the aforesaid documents Ex.C10 and Ex.C11.

3. I have heard learned counsel for the applicant and perused the record carefully.

4. In fact, in the present case, the respondent is an illiterate person and as per the applicant, he was working as a labourer in the fields of the applicant. In the present case, the respondent had produced the documents Ex.D1 to D5 to prove his defence. Further, the applicant had set up a case that he used to give whole salary in advance to the respondent. However, no receipt was ever prepared regarding the payment of such a huge amount to the respondent. Even the applicant had admitted that he had taken two buffaloes in the fields of the respondent for which he had not maintained any record. Consequently, the whole story projected by the applicant was highly unbelievable that he had advanced such a huge amount to the respondent without execution of any document. Even, the applicant had failed to prove on record any document to discharge the initial burden and the trial Court had rightly observed that the presumption under Sections 118 and 139 of the Act would not be drawn in favour of the present applicant in view of the defence evidence and the cross-examination of the applicant himself. Even otherwise, the trial Court has recorded good reasons while acquitting the respondent.

5. 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. The 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."

15. In *Ramesh Babulal Doshi v. State of Gujarat*, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

6. Still further in **Criminal Appeal No(s.) 410-411/2015**

[Ravi Sharma Vs State (Government of N.C.T. of Delhi) and

another], decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

*“Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short ‘Cr.P.C.’) while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused.

Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

7. Consequently, the impugned judgment dated 04.10.2017 passed by Sub Divisional Judicial Magistrate, Assandh, Karnal, is ordered to be upheld.

8. Thus, finding no merits, the application for leave to appeal is dismissed.

9. Pending application(s), if any, is also disposed off.

10. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

12.09.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

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