

227**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-A-773-MA-2016 (O&M)****Date of decision: 25.09.2023**

Rajpal

....Applicant

versus

Rajender Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Rajesh Bansal, Advocate for Applicant.

Mr. Vinod Gupta, Advocate for the respondent.

ARUN MONGA, J. (ORAL)

Application herein has been filed under Section 378 (4) of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking leave to appeal against judgment dated 25.02.2016 passed by learned Sub-Divisional Judicial Magistrate, Guhla, District Kaithal, vide which respondent has been acquitted, in a complaint filed under Section 138/142 of the Negotiable Instruments Act read with Section 420 IPC.

2. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:

"Complaint has filed the instant complaint under Section 138 of Negotiable Instruments Act read with Section 420 of IPC alleging that the accused had borrowed a sum of Rs.1,00,000/- from the complainant with a promise to pay back the said borrowed amount to the complainant on 12.11.2013. In discharge of his existing and legally enforceable liabilities to pay back the said borrowed amount of Rs.1,00,000/-, accused had issued a cheque no.401509 dated 12.11.2013 for Rs.1,00,000/- in favour of complainant which was to be drawn upon State Bank of Patiala, Guhla-Cheeka, Branch from his account no.55102200473. The complainant duly presented the said cheque for encashment with his banker ICICI Bank Ltd. Cheeka branch on 10.01.2013 and ICICI Bank Ltd. sent the said cheque to State Bank of Patiala Guhla-Cheeka for clearance but regret to say that the said cheque was returned/dishonoured to the complainant with the remarks of "payment stopped by drawer" vide memo dated 10.01.2014 of State Bank of Patiala Guhla-Cheeka. The complainant duly served a registered legal notice dated 20.01.2014 to the accused, which was duly received by the accused. It is further averred that above said cheque has been

dishonoured as the accused fraudulently stopped the payment knowing fully that there was no sufficient amount in the account of accused to honour the cheque amount and in order to cheat and defraud the complainant, the accused deliberately issued the cheque knowing fully that the same shall be dishonoured on presentation and hence the accused has committed offences punishable under Section 138/142 of Negotiable Instruments Act and Section 420 of IPC, hence this complaint."

3. After appreciating the evidence on record, vide impugned judgment dated 25.02.2016, learned Court below acquitted respondent of the charges levelled against him.

4. Aggrieved, applicant-complainant filed the present application seeking leave to appeal against aforesaid impugned judgment.

5. I have heard learned counsel for the applicant and perused the case file.

6. Impugned judgment dated 25.02.2016, *inter alia*, is premised on the following reasoning:-

"10. XXXXX. In order to prove his complaint, the complainant Rajpal had entered into the witness box as CW1 and has tendered affidavit Ex.CW1/A substantiating his complaint and further produced cheque dated 12.11.2013 as Ex.CA, Bank Memo as Ex.CB, Registered Notice Ex.CC, Postal Receipt Ex.CD. In his cross examination he deposed that notice Ex.CC which is present in the file was given as regards the present case to the accused by him. However, perusal of the notice Ex.CC placed with the complaint reveals that the same has been sent on behalf of Pawan Kumar and not on behalf of the present complainant Rajpal. As such, the essential requirement of serving notice as envisaged under Section 138 (b) of Negotiable Instrument Act by the payee or the holder in due course making demand for the payment of the said amount of the money to the drawer of the cheque has not been fulfilled. Notice placed on the file as Ex.CC has been sent on behalf of Pawn Kumar and not on behalf of present complainant Rajpal. There is no other notice on the file which was sent to the present accused subsequent to the dishonour of cheque, making demand for payment of the amount of money.

11. The complainant has also deposed in his cross examination that he along with his brother Pawan Kumar reside together in house no.128 and all the brother for have cordial relations. Here it is pertinent to note that of the complainant namely Pawan Kumar has also filed a separate complaint against the same accused Rajinder under Section 138 of the Negotiable Instrument Act which is bearing no.08 of 2014. The accused have placed in defence a writing dated 16.5.2013 placed as Ex.DA in the present case, whereby it has been got recorded that the settlement of account have taken place between Pawan Kumar and Rajinder Kumar and six undated cheques by Rajinder Kumar to Pawan Kumar out of which three are being returned by Pawan Kumar and the remaining cheque no.649600, 401509 and 401511 remains with Pawan Kumar and the same cold not be returned as he did not found the same and after finding the same, Pawan Kumar will return the same to Rajinder Kumar and the writing will be taken back. Further, it has been

written in Ex.DA that Pawan Kumar and Rajinder Kumar will use the said cheques. The present cheque in question is bearing no.401509 and in the writing dated 16.5.2013 it has been clearly mentioned that said cheque number have been remained with the Pawan Kumar brother of the present complainant and after finding he will return the same. Moreover, the notice sent in the present complaint to present accused is also on behalf of Pawan Kumar and not on behalf of present complainant Rajpal. It makes it clear that the cheque in question was infact with the brother of the complainant namely Pawan Kumar and as per the recital made in the writing the same was undated. It has also been mentioned in the writing that settlement of account between Pawan Kumar and Rajinder Kumar has been taken place and nothing remains due.

12. The complainant in his cross examination has deposed that he does not know as to when Rajinder Kumar had borrowed money from him. He has further stated that the money was in his account and one cheque from the account of Rs.1 Lakh was given by him. However, he does not remember as to on what date the said cheque was given. He had further stated that at the time of giving the cheque to Rajinder, no one was present. However, no such evidence as regards lending Rs.one lac to the accused has been produced by the complainant.

13. In view of the writing dated 16.5.2013 Ex.DA it is revealed that the transaction was infact between Pawan Kumar with the present accused and not the present complainant and the cheque in question remained pending with Pawan Kumar only. As such, the presumption envisaged under section 139 of the Negotiable Instrument Act in favour of the complainant that the cheque was given in discharge of legally recoverable debt or liability have been rebutted. In these circumstances, the onus to prove that the cheque in question was given by the accused to the complainant in discharge of legally recoverable debt or liability was on the complainant himself. However, no evidence have been produced in order to discharge this burden. Furthermore, the complainant has also not proved any statement of account in order to substantiate his claim that the amount allegedly borrowed by the account was given by him by way of cheque only. It is also pertinent to note that the cheque in question have been got dishonoured with the reason of stop payment and not because of insufficiency of funds. From the writing Ex.DA it is revealed that since the account were settled between Pawan Kumar and Rajinder Kumar and three cheques remained pending with Pawan Kumar, therefore, the accused has given instruction to his bank to stop the payment. Even otherwise no notice demanding the payment of cheque amount have been proved to be given by the present complainant to the accused. In these circumstances and in view of the aforementioned discussion, the present accused cannot be held liable for commission of offence punishable under Section 138 of the Negotiable Instrument Act. The accused is hereby acquitted from the charges against him. Bail bonds furnished on behalf of accused stands discharged. File be consigned to records, after due compliance".

7. In view of the aforesaid finding I find no ground to interfere on the vexatious argument that the settlement which was arrived at between the parties which though was signed by the brother of the complainant, but he has shown ignorance for the same and yet the complaint was filed only on the basis of legal notice issued by his brother. This aforesaid stand of the complainant blowing hot and cold, does not establish

any culpability on the part of the accused. The Court below therefore has rightly acquitted the respondent after appreciating the evidence on record in right perspective. I am inclined to agree with the conclusions drawn and view taken by learned trial Court.

8. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal/discharge, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

9. In **Anil Kumar Gupta vs. State of U.P.**², it is held as under:

“This Court held 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 an order of acquittal unless it comes to the conclusion that the 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. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.

(emphasis supplied)

11. This Court following the decision in **Ramesh Babulal Doshi**, further observed that ‘there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.”

¹2002(4) RCR (Criminal) 750 SC

²2001(2) RCR(Criminal) 292 SC

10. In the instant case, findings recorded by learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.
11. Instant application seeking leave to appeal is hereby dismissed.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 25, 2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No