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

**CRM-A-819-MA-2018 (O&M)
DATE OF DECISION : 02.08.2023**

Balwinder Singh**...Applicant****Versus****Gurjant Singh****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. K. B. S. Mann, Advocate,
For applicant/appellant.

ARUN MONGA, J. (ORAL)

This is an application seeking leave to appeal against judgment dated 09.01.2018 passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib, vide which accused was acquitted of the charge levelled against him under Section 138 of Negotiable Instruments Act, 1881.

2. Impugned order dated 26.05.2014 is, inter alia, premised on the following factual details and reasoning:

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xxx

11. Now it is a case of the complainant that on 01/09/2015 accused issued a cheque bearing No.230620 for an amount of Rs.2,25,000/-in favour of complainant in discharge of his legal liability, but on presentation the said cheque was dishonoured with the memo of "Funds Insufficient" and accused failed to pay the said amount despite service of legal notice upon him within stipulated period of time. In this regard complainant has examined the aforesaid witnesses. After going through the contents of complaint, it comes to light that the complainant Vs. Gurjant Singh allegedly advanced the amount of Rs.2,25,000/- to the accused in the month of December, 2015. However, no date of the alleged advancement has been mentioned. The complainant has also admitted that he is serving as police official in Punjab Police. He has also stated in the complaint that he borrowed the said amount as the amount of Theka/lease from one Beant Singh son of Amrik Singh. It is admitted by the complainant that no writing with regard to advancement of the amount to the accused was executed by him. Complainant has failed to

prove the fact with regard to his thickness of relationship with the accused on the basis of which he advanced huge amount of Rs.2,25,000/- to him. On the other hand where he is borrowing the amount in question from Beant Singh son of Amrik Singh by allegedly leasing out his land, he is getting the writing of the same executed, proved on record as Ex.C6. This is not a conduct of prudent person. Moreover, the complainant is required to prove his paying capacity to advance the amount. In order to prove the Thekanama when the complainant examined Beant Singh as CW2 and Attar Singh as CW3, both the witnesses in their examination-in-chief have categorically stated that Beant Singh had given his land measuring 07 Kanal to the complainant on lease for total amount of Rs.3,85,000/- out of which Rs.2 lacs was to be paid in Hari, 2016, which was allegedly received by complainant on 20.12.2015. The said averment is in complete contradiction with the contents of Thekanama as well as those of the complaint. As per testimony of CW2 and CW3, it was complainant, who advanced the amount to Beant Singh and not otherwise. Therefore, the said witnesses are no a rescue of the fact that complainant borrowed the Balwinder Singh amount from Beant Singh. Even otherwise in his cross-examination Beant Singh stated that he handed over the amount of Rs.2 lacs by withdrawing the same from Punjab National Bank, Branch Ladhu Ke Uttar, but failed to produce any passbook of the said bank account. Therefore in all eventualities the capacity of complainant to advance the amount to the accused does not stand proved on record. Accused during the course of his defence evidence has proved on record the application moved by him dated 15.03.2015. Learned counsel for the complainant has argued that the said application was moved almost one year prior to the alleged occurrence. However, the said contention of learned counsel for the complainant is not convincing. The date mentioned as 15.03.2015 is clearly a typographical error. The same ought to have been 15.03.2016 and this fact also stand fortified from the various endorsements of SSP office made upon the application itself bearing dates 16.03.2016 and . As per the contents of the said application the accused mentioned the entire occurrence as mentioned by him in his plea taken by him under Section 313 Cr.P.C. Admittedly no action was taken by the police on the application moved by the accused. The accused has proved on record inquiry report Ex.D1. The said report consists of various applications moved by accused dated 04.02.2016 before Senior Superintendent of Police and I.G.Bathinda, meaning thereby the said applications were moved prior to the issuance of the notice by the complainant Ex.C5. Therefore it cannot be said that defence taken by the accused in the present case is an afterthought and was rather prevalent even before the issuance of legal notice by the complainant. From the Balwinder Singh VsGurjant Singh totality of the aforesaid facts and discussion, it comes to light that the complainant is not in possession of the cheque in question in due course of business and same was not issued by

accused in discharge of his legal liability. As such case of the complainant remains highly doubtful. Benefit of doubt is required to be extended to the accused. Consequently, accused is acquitted of the notice under Section 138 of N.I.Act served upon him. His bail bonds and surety bonds stand discharged. File be consigned to record room after due compilation.”

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

4. It would be seen that after appreciating the evidence on record, vide impugned judgment dated 09.01.2018, learned Court below did not find sufficient material on record to frame charge against the accused persons (respondent herein) and acquitted him.

5. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

6. 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, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

7. In ***Anil Kumar Gupta vs. State of U.P.***², it was 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

¹ 2002(4) RCR (Criminal) 750 SC

² 2001(2) RCR(Criminal) 292 SC

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 reappreciating 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.'

8. I am of the opinion that 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.

9. Instant application seeking leave to appeal is hereby dismissed.

10. Pending application(s), if any, shall also stand disposed of.

AUGUST 02, 2023
Shalini

(ARUN MONGA)
JUDGE

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