

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

**CRM-A-927-MA-2018**

Date of Decision: 22.02.2023

Narendraajeet Singh

..... Applicant

Versus

Tejinder Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present: Mr. Harish Sharma, Advocate, for the applicant.

**Rajesh Bhardwaj, J.**

The applicant has filed the application under Section 378(4) Cr.P.C. for grant of leave to file an appeal against the impugned order dated 15.02.2018 passed by the learned JMIC, Ludhiana, whereby, the complaint filed by the applicant-complainant was dismissed and respondent-accused was acquitted from the charges framed against him.

Succinctly, facts of the case are that the applicant had friendly relations with respondent from the last so many years and due to friendly relations, the respondent approached him for a loan of Rs.1 lac in March 2015. On his request, the applicant advanced a friendly loan of Rs.1 lac to the respondent in March 2015. The respondent promised to return the same within a short period. Thereafter, in order to discharge his legal enforceable liability to return the said loan amount, the respondent issued three cheques bearing No.020350 dated 11.06.2015 for Rs.50,000/-, No.095740 dated 13.06.2015 for Rs.20,000/- and No.018630 dated 15.06.2015 for Rs.30,000/- in favour of the applicant-complainant. However, when the applicant presented the same before the Bank, all the three cheques were dishonoured with the remarks “Insufficient Funds/Exceeds Arrangement” and “Account Closed”. Resultantly, the applicant served a legal notice to

call upon the accused-respondent to make the payment of the cheques amount, but he failed in making the payment and thus, the applicant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') for prosecution of the respondent. Learned trial Court after a thorough trial dismissed the complaint and thus, acquitted the accused-respondent from the charges levelled against him vide impugned order dated 15.02.2018. Thereafter, the applicant has approached this Court by way of filing the present application for grant of leave to file appeal.

It has been vehemently contended by learned counsel for the applicant that the learned trial Court has miserably failed in appreciating the evidence on record and thus, has drawn a wrong conclusion in dismissing the complaint by acquitting the accused. He submits that both the applicant and the respondent had friendly relations since long and on the request of the respondent, a friendly loan of Rs.1 lac was advanced by the applicant to the respondent and to discharge his legal liability, the respondent issued three cheques total amounting to Rs.1 lac. He submits that on the presentation of the same before the Bank, all the three cheques were dishonoured. He submits that once the respondent has admitted having issued all the three cheques as contended by the applicant, there lies presumption under Section 139 of the Act against the respondent as the cheques were issued by him while discharging his legal liability, but the learned trial Court has failed to appreciate the same and thus, has drawn the conclusion against the law settled. He further submits that the learned trial Court has drawn the conclusion on the basis of conjectures and surmises that why the respondent has issued three cheques for one single loan and not a single cheque and thus, drawn a wrong presumption against the

complainant, which is unsustainable in the eyes of law. He has further submitted that the view taken by the learned trial Court is unsustainable in view of Sections 118 and 139 of the Act. He has submitted that the view taken by the learned trial Court is totally perverse and thus, deserves to be set aside and the accused-respondent be convicted for the charges framed against him.

Heard.

After hearing learned counsel for the applicant and perusing the record, it is apparent that the respondent had issued three cheques bearing No.020350 dated 11.06.2015 for Rs.50,000/-, No.095740 dated 13.06.2015 for Rs.20,000/- and No.018630 dated 15.06.2015 for Rs.30,000/- in favour of the applicant-complainant as contended by learned counsel for the applicant. The issuance of cheques by the respondent is in itself not sufficient. Though there lies a presumption under Section 139 of the Act, but as per law settled the same is rebuttable. Learned trial Court on the presentation of the complaint recorded the evidence produced by both the sides. The complainant appeared in the witness box as CW-1 and all the three cheques in dispute were exhibited as Ex.C-1 to Ex.C-3. The respondent had duly joined the proceedings on his summoning and he totally denied having taken the loan of Rs.1 lac from the complainant as contended. He took a specific plea that the complaint filed is a counter blast to the ejectment petition filed by the nephew of the respondent-accused against the applicant-complainant. He has further taken the stand that the cheques in question were given to the complainant in the year 1998 as consideration for vacating the tenanted premises, but neither the complainant vacated the premises nor returned the old undated cheques. In

the statement recorded under Section 313 Cr.P.C., the respondent-accused totally denied the case put up against him and pleaded his innocence. The learned trial Court appreciated the evidence produced by both the applicant and the respondent-accused. On perusal of the same, it is evident that the complainant-applicant during his cross-examination admitted the litigation before the Rent Controller between the nephew of respondent-accused and him. It was admitted by him that father of the nephew of the respondent-accused i.e. Amarjit Singh and respondent-accused Tejinder Singh were the owners and landlord of the property in dispute and he was in possession of five shops as tenant under the ownership of the accused-respondent and his nephew. Thus, the stand taken by the respondent-accused that the complaint filed was a counter blast to the ejectment petition filed by the nephew of the respondent-accused is strengthened from the cross-examination of the applicant-complainant. It is evident from the record that the accused-respondent examined DW-1 Narinder Kumar Bansal, who produced on record the documents as Ex.D-1 to Ex.D-5 to show that the cheques in question were issued to the respondent-accused by the Bank during the year 2007, which is evidently prior to the alleged advancement of the loan by the complainant. It is apparent that the litigation under Section 138 of the Act originated after the petition for ejectment filed against the applicant-complainant. Besides this, the alleged loan was only for an amount of Rs.1 lac, for which the respondent could have issued only one cheque, whereas, in the case in hand, three different cheques were issued in discharge of the legal liability for clearance of loan amount, which in itself, appeared to be irrational in the facts and circumstances of the case. No doubt, there lies presumption under Section 139 of the Act, but the same is rebuttable and in

the overwhelming evidence produced on record, the same has been found to be rebutted by the respondent and resultantly, the respondent had been acquitted.

As per law settled, the appeal against conviction and that against acquittal rests entirely on different pedestal. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per the law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there lies double presumption of innocence in his favour. Hence, an Appellate Court should not disturb the findings of acquittal arrived at by the trial Court in a cavalier manner and it is only in case of perversity of the findings, the Appellate Court should interfere in the acquittal order passed by the trial Court. In **Jafarudheen and others vs State of Kerala** 2022 SCC Online SC 495, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., 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.”

Weighing the facts and circumstances of the present case on the anvil of law settled, this Court finds no perversity in the order passed by

the trial Court. Resultantly, the present application for grant of leave to appeal is dismissed.

22.02.2023

sharmila

(RAJESH BHARDWAJ)

JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No