IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-A-354-MA-2017 (O&M)
Date of Decision: 17.04.2023

LALIT KUMAR

... Appellant

VERSUS

SANDEEP TANWAR

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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Present: Mr. Surinder Kumar Daaria, Advocate
for the applicant-appellant.

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SANDEEP MOUDGIL, J. (ORAL)

By way of filing present application under Section 378(4) Cr.P.C. the applicant-appellant has assailed sought leave to file appeal against the judgment dated 17.11.2016, passed by the Judicial Magistrate Ist Class, Gurugram, dismissing the complaint and acquitting the respondent-accused therein of the notice of accusation served upon him under Section 138 of the Negotiable Instruments Act (for short 'the Act').

It is contended that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the trial Court held the applicant-appellant has failed to prove his financial capacity enabling him to lend a huge amount of Rs.6,00,000/- to the respondent-accused. It has also been held that the respondent-accused has successfully rebutted the presumption raised against him under Section 139 of the Negotiable Instruments Act, 1881. Such findings are erroneous, baseless, without application of judicial mind and as such, the same deserves to be set aside. It is further contended that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque. It is well settled position in law that once an accused admits his signatures on the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but inspite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. It is further submitted that the trial Court has erroneously based its finding regarding the financial capacity of the complainant, whereas he has specifically stated in his cross-examination that he is earning money through committees (chit fund business) and the properties rented out by him. Thus, the applicant-appellant has sufficiently proved his source of income, which could not have been overlooked by the trial Court. It is further contended that certain arguable points are involved in the present case, which need to be determined after hearing the parties on merit. Further, despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 17.11.2016 is liable to be set aside.

Heard.

I have perused the impugned judgment carefully and have also gone into the findings recorded by the trial Court meticulously. Upon perusal of the same, I do not find any perversity or illegality therein. The complainant specifically deposed in his cross-examination that the business of committees and the properties rented out by him are his sources of income. However, to the utter dismay of this Court, the applicant-appellant has not produced any documentary proof his income, especially when he does not have a permanent job and was merely a student of LLB – first year. Even no ITR, balance sheet or statement of account has been produced on record to correlate his assertion qua his source of income. Even otherwise, this Court is further of the opinion that the business of committees is not recognized by the prevailing law and it is not permissible business in the eyes of law. Hence, the income, if any, generated from such business cannot be terms to be lawful income. Hence, any amount lent out of said income cannot be termed to be a legally enforceable debt, which is a requisite mandate of the Negotiable Instruments Act, 1881. Further, as far as another source of income as disclosed by the applicant-appellant i.e. the properties given on rent is concerned, in this regard, there is no documentary proof on record. The applicant-appellant has failed to bring on record any proof of ownership of such properties and the persons to whom the properties are given on rent. The applicant-appellant has not produced even a single sale deed or rent deed on record to substantiate his contention. Even no tenant has been examined as witness to prove the income of the applicant-appellant. Furthermore, it has also nowhere been mentioned for on which date, time and place and for what purpose the said amount of Rs.6,00,000/- was lent by the applicant-appellant to the respondent-accused. Hence, in the absence of such proofs/evidence, the trial Court has right held that the applicant-appellant has failed to prove his financial capacity to lend such a huge amount of Rs.6,00,000/-.

It is a settled law as held in **C. Antony v. K.G. Raghavan Nair, 2002(4) RCR(Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his 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.

On perusal of the judgment passed by the trial Court dated 17.11.2016, this Court is of the considered view that the said judgment is well reasoned and is based upon proper and concrete appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or warranting any interference by this Court. The accused-respondent has been duly able to rebut the presumption under Section 139 of the N.I. Act, 1881 and as such, he has rightly been acquittal of the notice of accusation served upon him.

Accordingly, the leave to appeal stands declined.

Dismissed.

(SANDEEP MOUDGIL)
JUDGE

17.04.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No