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

***CRM-A-654-MA-2014 (O&M)***
***CRM-13103-2014***
**Date of Decision: 19.04.2023**

NISHAN SINGH

…Applicant

Versus

PANKAJ KUMAR

…Respondent

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

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

**HARSH BUNGER, J. (Oral)**

***CRM-13103-2014***

This is an application seeking condonation of delay of 276 days in filing the application for grant of leave to file appeal along with accompanying appeal.

Notice of the application for condonation of delay was issued to the respondent; whereupon, the respondent appeared through his counsel and contested the application by filing the reply.

For the reasons recorded in the application, the same is allowed and delay of 276 days in filing the application for grant of leave to file appeal along with accompanying appeal is condoned.

Criminal Misc. Application stands disposed of accordingly.

***CRM-A-654-MA-2014***

Applicant-Nishan Singh has filed the instant application under Section 378(4) of the Code of Criminal Procedure, seeking permission for leave to file appeal against respondent-Pankaj Kumar, challenging the impugned judgment dated 17.05.2013 passed by learned Judicial Magistrate

Ist Class, Amritsar, vide which, the respondent-accused was acquitted in the complaint filed by the applicant/complainant under Section 138 of the Negotiable Instruments Act (for short `N.I. Act').

2. In the application, it has been mainly stated that the impugned judgment is contrary to law and facts and is thus un-sustainable in the eyes of law. It is further stated that the applicant has a good *prima facie* case on merits and the judgment of acquittal of respondent-accused has caused grave miscarriage of justice; accordingly, prayer has been made for grant of leave to file appeal.

3. A perusal of the paper book would show that applicant-Nishan Singh, filed a complaint against respondent-accused (Pankaj Kumar) under Section 138 of the N.I. Act. As per the complaint, the respondent-accused took a friendly loan of Rs.7,00,000/- from the applicant-complainant and assured him to repay the said amount within a short span of time. However, when the applicant-complainant demanded the amount back, the respondent-accused showed his inability to pay the said amount in cash and in order to discharge his legal debt/liability, it was alleged that the respondent-accused had issued one cheque bearing No.010053 dated 30.04.2008 for a sum of Rs.7,00,000/- drawn on Centurion Bank of Punjab (now HDFC), Branch Khalsa College International Public School, Ranjit Avenue, Amritsar, in favour of the applicant-complainant with the assurance that the said cheque would be encashed upon its presentation. As per the applicant-complainant, when the said cheque was presented through his banker namely, Punjab and Sind Bank, Branch Khalsa College, Amritsar, the same was dishonoured with the remarks "Sign Differ and Insufficient Funds" vide memo dated 17.10.2008. Thereafter, the applicant-complainant is stated to have served a legal notice

dated 25.10.2008 upon the respondent-accused; however, he failed to make the payment within the stipulated period, accordingly, the above-said complaint under Section 138 of the N.I. Act was filed.

4. After recording of preliminary evidence, the respondent-accused was summoned vide order dated 10.12.2008. Subsequently, notice under Section 138 of the N.I. Act was served upon the respondent-accused on 19.02.2011, to which, he pleaded not guilty and claimed trial.

5. The applicant-complainant, in support of his case, examined himself as CW-1. Thereafter, the statement of the respondent-accused under Section 313 of the Code of Criminal Procedure, was recorded; wherein, all the incriminating material/evidence was put to him, however, he stated that he had not taken the alleged loan from the applicant-complainant and he never issued the cheque in question, in favour of the applicant-complainant. It was categorically pleaded that the maternal uncle (Mama) of the applicant-complainant namely, Baldev Singh along with respondent-accused used to do the business of property dealing and it was Baldev Singh, who had taken the cheque in question from the respondent-accused during the course of business of property dealing. It was also stated that Baldev Singh had given Cheque No.149992 of Bank of India, Branch Vijay Nagar, Amritsar, which belongs to his wife Baljit Kaur for the security of cheque in question because Baldev Singh told the respondent-accused that the said cheque has been misplaced by him. It is also the stand of the respondent-accused that Baldev Singh had given the cheque in question to Nishan Singh for presentation of the same in the bank because Baldev Singh is a government employee and they, in connivance with each other, filed a complaint under Section 138 of the N.I. Act against the respondent-accused.

6. In defence, the respondent-accused examined DW1 Kuldeep Singh, Ahlmad, DW2 Pawan Kumar Maini, Clerk, Bank of India, DW3 Amandeep Singh, Clerk, Office of Sub Registrar, Amritsar II and thereafter, closed the defence evidence.

7. Learned Judicial Magistrate Ist Class, Amritsar, after appreciating the evidence/material on record, dismissed the complaint and acquitted the respondent-accused vide impugned judgment date 17.05.2023.

8. Aggrieved with the above-said judgment, the instant application, seeking grant of leave to file appeal along with accompanying appeal has been filed before this Court.

9. I have heard learned counsel for the applicant/complainant and gone through the impugned judgment dated 17.05.2013 passed by learned Judicial Magistrate Ist Class, Amritsar.

10. As regards the legal position qua scope of interference in an appeal against judgment of acquittal; recently, in ***Criminal Appeal No. 1904 of 2014, Roopwanti v. State of Haryana (Decided on 24.02.2023)***, reported as ***2023(3) Scale 323***, Hon'ble Supreme Court of India, has held as under: -

> "*7. In cases where a reversal of acquittal is sought, the courts must keep in mind that the presumption of innocence in favour of the accused, on grounds of it surviving the rigours of a full trial, is strengthened and stands fortified. The prosecution then, while still working under the same burden of proof, is required to discharge a more onerous responsibility to annul and reverse the fortified presumption of innocence. This fortification of the presumption of innocence has been held in a catena of judgments by this court.*
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> *8. In the case of **Allarakha K. Mansuri v. State of Gujarat 2002(1) RCR(Criminal) 748**, this Court has*

*held that in cases of reversal of acquittal, where two views are possible, the view which favors the accused has to be adopted. For the sake of Convenience, the relevant paragraph of the judgment is being produced hereunder:*

> *"The settled position of law regarding the powers to be exercised by the High Court in an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."*

*9. Further, in the case of* ***Suman Chandra v. Central Bureau Of Investigation Criminal Appeal No.1645 of 2021*** *wherein the acquittal of the accused was challenged, this court held that while exercising its powers to reverse an acquittal, the order of the trial court must not only be erroneous, but also perverse and unreasonable. The relevant paragraph of the judgment is being extracted herein:*

> *"It is well settled law that reversal of acquittal is permissible only if the view of the Trial Court is not only erroneous but also unreasonable and perverse. In our considered opinion, the view taken by the Trial Court was a possible view, which was neither perverse nor unreasonable, and in the facts*

*and circumstances of the present case, ought not to have been reversed or interfered with by the High Court."*

*10. Similarly in the case of* ***Mrinal Das & Others v. The State of Tripura 2011(9) SCC 479****, this Court held that interference in a judgment of acquittal can only be made if the judgment is "clearly unreasonable" and there are "compelling and substantial reasons" for reversing the acquittal. The relevant paragraph of the judgment is being reproduced herein:*

> *"An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed".*

*11. As can be seen from the above-mentioned judgments, an additional layer of protection is granted to an accused in cases where the accused already enjoys an acquittal. In the present case, we are in agreement with the decision of the High Court. From a perusal of the judgment of the Trial Court, it can be seen that no perversity has been committed by the Trial Court while reaching its conclusion. All the evidence on record has been carefully perused and a detailed analysis has been carried out to come to the conclusion.*

*12. In such circumstance, we find no reason to interfere with the decision of the Trial Court as well as the High Court."*

11. Coming to the case in hand, the learned trial Court, after considering and appreciating the evidence available on the record, dismissed the complaint under Section 138 of the N.I. Act filedby the applicant-complainant by holding as under:-

> *"14. In present case, complainant has approached the Court with assertion that accused had good relations with him and as a result of which he advanced a friendly loan of Rs.7,00,000/- to the accused. The accused has not denied his signatures on the cheque in question. The accused has taken a stand that the cheque in question was given to maternal uncle of the complainant which has been handed over to complainant to file the present case. In order to rebut the initial onus placed on him by presumptions raised by Section 118 and 139 of Negotiable Instruments Act the accused has relied upon following circumstances and facts :-*
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> *I) In his cross-examination dated 6.11.2012 the complainant has admitted that S. Baldev Singh S/o Tara Singh is his maternal uncle.*
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> *II) In his cross-examination dated 25.1.2013 complainant has admitted that Smt. Baljit Kaur is wife of his maternal uncle S. Baldev Singh.*
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> *III) In his cross-examination dated 25.1.2013 complainant admitted a visiting card Ex.D2 in which his name and name of his maternal uncle Baldev Singh is mentioned as property advisors.*
>
> *IV) In his cross-examination dated 25.1.2013 complainant has admitted that his maternal uncle used to go to the house of accused as well as at his place of business.*
>
> *V) And most importantly accused has produced cheque Ex.DD which is a blank cheque issued by one Baljit Kaur. Accused has examined*

*DW2 Sh. Pawan Kumar Maini, who is a Clerk in Bank of India, Branch Kashmir Avenue, Amritsar. He has proved that cheque Ex.DD was issued in the name of Smt. Baljit Kaur W/o Baldev Singh. This Baljit Kaur is none other than wife of maternal uncle Baldev Singh as already admitted by the complainant. When during his cross-examination the complainant was asked specifically about this cheque he merely stated that he does not know whether his maternal uncle had issued cheque Ex.DD to accused for the security of cheque in question. Thus, complainant gave an evasive answer and did not deny it outrightly. Perusal of cheque Ex.DD shows that there is an endorsement on its obverse that it is being given against cheques 010055 and 010053. This endorsement is signed by Baldev Singh. Now, ld. Counsel for the accused has argued that accused and maternal uncle of the complainant used to do business of property dealing. As a security accused had issued two cheques to Baldev Singh i.e. maternal uncle of the complainant. However, differences arose between them and accused asked Sh. Baldev Singh to return cheques given by him as a security. However, maternal uncle of complainant S. Baldev Singh stated that he has lost the cheques given by accused and in order to give assurance to accused that he would not misuse the cheques given as security by the accused cheque Ex.DD was issued by wife of maternal uncle of the complainant i.e. Sh. Baldev Singh and was handed over to the accused. It is pertinent to note that when ld. Counsel for the complainant cross-examined* *the DW2 Sh. Pawan Kumar Maini not even a question was asked about the endorsement made on the obverse of the cheque Ex.DD. Neither complainant has made any effort to explain that how this cheque reached the hands of the accused.*

*VI) Accused has also examined DW3 Amandeep Singh, Clerk, of Sub Registrar Amritsar II who has proved power of attorneys and cancellation deeds Ex.D3/A to Ex.DW3/G. The significance of these documents is that in these documents various transactions were carried on which were witnessed by maternal uncle of the complainant Sh. Baldev Singh. The accused has relied upon these documents to show that there were close relations between the maternal uncle of the complainant i.e. Sh. Baldev Singh and accused.*

*15. So, from these facts and circumstances relied upon by the accused the initial onus placed on the accused was discharged by the accused and it shifted back again to the complainant to prove his case. Now, complainant is admittedly an agriculturist. Ld. Counsel for the complainant has argued that complainant owns huge tracts of land and has financial capacity to advance the loan in question. He has also argued that complainant has produced on record copies of jamabandies and J-Forms to show that he has financial capacity to advance the loan in question. On the other hand, ld. Counsel for the accused has argued that merely having financial capacity to advance such a huge loan does not mean that loan was actually advanced by the complainant. The complainant has not placed on file any document to show that he actually withdrew such a heavy amount from any bank or any other place. It has been further argued that normally*

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authenticity of this order/judgment

*any person does not keep such a huge amount in his house. Complainant must have withdrawn the same from any bank etc. However, complainant has not placed on file any document from which it could be proved that complainant withdrew the amount in question from his bank. There is a merit in the submission made by the ld. Cousnel for the accused. Normally, the absence of such documents may not matter much. But in present case the accused has succeeded in discharging his initial onus. So, in these circumstances this factor becomes very material. If complainant gave the amount in question in cash then surely he must have withdrawn the same from his bank. However, he has not produced his statement of account to show any withdrawal entry which could have corroborated his version that he had advanced a loan of Rs.7,00,000/- to the accused.*

*16. Ld. Counsel for the accused has argued that when complainant was cross-examined on the point of his relations with the accused he was unable to give satisfactory answers. In his cross-examination dated 23.10.2012 the complainant replied that he does not know that how many children are there of accused. He does not know that where brick-kiln of accused is situated. He also does not know names of brothers of accused. In his cross-examination dated 25.1.2013 complainant replied that :-*

> *It is correct that there is no relation between me and Pankaj Kumar. Voluntarily I am only friendship with alleged Pankaj Kumar…it is correct that there is no business dealing between me and Pankaj Kumar. It is correct that I was not participated in the marriage in Pankaj Kumar.*

*These answers show that complainant knows little about person to whom he has advanced such a huge amount of money as a friendly loan. On the other hand, ld. Counsel* *for the complainant has argued that from these answers it cannot be inferred that accused never issued the cheque in question in favour of the complainant. As already discussed earlier, that these answers of the complainant become material when seen in conjunction with the circumstances relied upon by the accused. The only inference to be drawn is that complainant has failed to prove that he advanced the loan in question to the accused. Thus, in the present case the complainant has failed to prove that accused was under any legal debt or liability in discharge of which accused could have issued the cheque in question to the complainant.*

*17. Accordingly, in view of the discussion made above, no ground is made out to proceed against the accused under Section 138 of Negotiable Instruments Act. Consequently, the complaint is dismissed and the accused is acquitted of the notice served upon him. Bail bonds and surety bonds stands discharged. File be consigned to record room."*

12. The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Appellant-complainant had miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

13. When the findings given by the trial Court are considered in the light of the legal position indicated above; no interference is called for; especially when the appellant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 17.05.2013 passed by learned Judicial Magistrate Ist Class, Amritsar.

14. No other argument was raised.

15. In view of the above discussion, the instant application under Section 378(4) of the Code of Criminal Procedure, seeking permission for leave to file appeal, is bereft of any merit and the same is accordingly dismissed. The judgment dated 17.05.2013 passed by learned Judicial Magistrate Ist Class, Amritsar is upheld.

16. All pending application/s, if any, shall stand closed.

**April 19th, 2023** **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No