

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

**CRM-A-8-MA-2015(O&M)
Date of Decision: 15.05.2023**

PAWAN KUMAR

... Appellant

VERSUS

RAKESH KAPOOR

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Aggarwal, Advocate
for the applicant-appellant.

SANDEEP MOUDGIL, J. (ORAL)

1. By way of filing present application under Section 378(4) Cr.P.C. the applicant-appellant has sought leave to file appeal against the judgment dated 20.02.2013, passed by the Judicial Magistrate Ist Class, Amritsar, dismissing the complaint and acquitting the respondent-accused of the notice of accusation served upon him under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. 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 also submitted that the trial Court has not appreciated the cogent and convincing evidence led by the appellant-complainant, as the fact that the respondent-accused has not denied his signatures on the cheque and has even not examined a single witness to disprove the case of the appellant-complainant; even despite that the trial Court believed the ocular version of the respondent-accused and acquitted him.

The counsel has vehemently assailed the findings that the respondent-accused

has successfully rebutted the presumption raised against him under Section 139 of the Negotiable Instruments Act, 1881 being erroneous, baseless, without application of judicial mind and as such, the same deserves to be set aside. It is further the case set up by the applicant-appellant that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque on the strength that as per settled position in law, 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. Mr. Aggarwal also submits that 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 in spite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. The counsel has folded up the submission stating that certain arguable points are involved in the present case, which need to be determined after hearing the parties on merit because it being a fully proven case, the trial Court has wrongly and illegally acquitted the accused sought that the impugned judgment dated 20.02.2013 is liable to be set aside and the present application is liable to be allowed.

3. Heard.

4. 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. It is the specific stand of the respondent-accused that he never took money from the appellant-complainant; rather some blank signed cheques and stamp papers were fraudulently taken from him Raman Kumar, Vinay Kumar, Monu on the pretext of availing loan facility to the accused. But later on, they did not get any loan from him, rather misappropriate and misused the documents given by the

accused including the cheque in question. He further submit that he has filed a criminal complaint under Section 420 of the IPC against the above said persons, which is pending adjudication before the Court.

5. Now the stand of the appellant-complainant is that the accused has not led any oral or documentary evidence in order to prove his contentions and as such, the same are liable to be discarded. However, on the contrary, there is something contrary on the record. It is well established principle of law that in order to prove the liability, there must be some direct transaction between the accused and the complainant. However, in his cross-examination, the complainant has specifically deposed that he did not know the accused and all the transactions had taken place through Vinay Kumar. He further admitted that he had given money to the accused on the asking of Vinay Kumar and at that point of time, he even did not ask that as to for what purpose the money is needed. He further admitted in his cross-examination that he had filed the present complaint at the behest of Vinay Kumar.

6. Now, once the complainant has himself admitted the stand of the accused in his cross-examination, then there is no need of any other type of evidence to prove the same. The complainant has himself demolished his own case by admitting that he had given money on the asking of Vinay Kumar and has filed the present complaint at the instance of said Vinay Kumar itself.

7. 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.

8. On perusal of the record and in the light of discussions made hereinabove, 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 acquitted of the notice of accusation served upon him. Accordingly, the application seeking leave to appeal stands declined.

9. Dismissed.

15.05.2023
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(SANDEEP MOUDGIL)
JUDGE

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