

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

236

**CRM-A-417-2022 (O&M)
Date of Decision: 04.09.2023**

HDFC Bank Ltd.

...Petitioner

Vs.

Inder Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Saurabh Bhardwaj, Advocate
for the applicant.

N.S.SHEKHAWAT, J. (Oral)

1. Challenging the correctness and legality of impugned judgment dated 16.12.2021 passed by the Judicial Magistrate 1st Class, Hisar, the applicant/complainant has preferred the present application before this Court.

2. The brief facts of the case are that the complaint was filed by the applicant/complainant before the trial Court with the allegations that the respondent had requested for the grant of financial assistance under KGC Loan Scheme to complainant bank and requested for Cash Credit Loan and Term Loan and assured that he will repay the Cash Credit Loan of Rs. 8,75,000/- after every half year with interest and Term Loan of Rs. 4,35,000/- in half yearly installments plus interest. Considering the request of the accused and relying upon his representation, the complainant granted Cash Credit

Loan of Rs. 8,75,000/- and Term Loan of Rs. 4,35,000/- to accused. He also executed necessary Cash Credit Loan agreement and Term Loan agreement and other documents for availing the aforesaid loans and it was agreed by him that the aforesaid Cash Credit Loan will be repaid after every half year and Term Loan will be repaid in half yearly installments. The accused in partial discharge of his legal liability/debt issued in favour of the complainant a cheque bearing No. 000001 dated 08.06.2018, amounting to Rs. 8,75,000/-, towards the repayment of balance loan amount of Cash Credit Loan and Term Loan. The aforesaid cheque was presented on 08.06.2018 in HDFC Bank, Railway Road, Hisar for realization to the Bank of the accused, the same was returned unpaid for the reason 'Insufficient Funds' vide bank's memo dated 08.06.2018. The aforesaid cheque was given to the complainant by the accused towards partial discharge and repayment of his debt legally due to the complainant. The complainant bank thereafter got issued a legal notice dated 16.06.2018 with demand of making the payment of the cheque amount within 15 days from the receipt of the notice. The said notice was dispatched by registered post on 19.06.2018 calling upon him to make the payment of the dishonoured cheque within 15 days of the receipt of notice. The accused failed to make the payment of the said cheque within the stipulated period of fifteen days of the receipt of the notice.

3. Learned counsel for the applicant argued that the impugned judgement is based on misappreciation of evidence. In fact, the liability was never disputed by the respondent and no evidence was led by the respondent to prove his defence. When the respondent did not deny the availing the loan amount or the loan outstanding on the date of presentation of cheque, the complaint filed by the respondent was liable to be allowed. Learned counsel for the applicant further submitted that during the preliminary hearing, the applicant/bank had produced on record the loan account statements of the accused/respondent as Ex.C-6 and C-7. However, at the time of post-charge evidence, the documents pertaining to other loan account of Betab Singh were exhibited in the present case. He, however, further submits that the account of respondent had become non-performing assets and as per the liability shown on the cash credit limit, the amount was payable on the date of presentation of the cheque. Consequently, the presumption should have been drawn in favour of the applicant/complainant and not against him. Learned counsel has further submitted that the cheque was given in due course to discharge the lawful liability and the accused failed to discharge his liability and the complaint was liable to be allowed by the trial Court.

4. I have heard learned counsel for the applicant/complainant at length and perused the record.

5. The trial Court held that no doubt the cheque in question was issued/drawn by the respondent and the ground of dishonour was covered under Section 138 of the Negotiable Instruments Act, but the applicant failed to prove that the cheque in question was issued in discharge of legally enforceable debt/liability and the respondent was successful in rebutting the presumption raised against him under Section 138 of the Negotiable Instruments Act and the respondent was successful in proving the fact that the cheque in question had been misused by the applicant. Even, there is no force in the submissions made by the learned counsel for the applicant that the liability was never disputed by the respondent and no defence had been put forward by him and in such a situation, the presumption should not have been raised in favour of the applicant. Still further, there was a presumption that the cheque in question was issued in discharge of legal debt/liability. In fact, the said submissions are contrary to the record. The applicant had tried to set up a case that the respondent, in partial discharge of his legal liability/debt, had issued a cheque, i.e. cheque in question in favour of the applicant towards the repayment of balance loan amount of Cash Credit Loan and Term Loan. However, it is apparent from the loan agreement and the loan account statement Ex.C-6, Ex.C-7 and Ex.C-8, all these documents are related to the loan account of a person Betab Singh. The applicant completely failed to prove on record the outstanding liability qua the loan agreement amount against the respondent. Even, Ex.C-9, i.e. the

application for retail agricultural loan also pertained to Betab Singh son of Balwant Singh and Pardeep Kumar son of Balwant Singh, who had applied for a loan of Rs. 6,40,000/- for crop production and Rs. 2,10,000/- for farm development, which were bearing their signatures. Even Ex.C-10 and Ex.C-11 pertained to some other person. The loan account statements Ex.C-6 to C-8 also pertained to Betab Singh and the applicant/complainant completely failed to prove the outstanding liability against the present respondent. Rather the loan account statements Ex.C-6 to Ex.C-8 proved on record the outstanding liability of Betab Singh and could never be related to the account of the respondent. Thus, the documents relating to loan agreement and other papers related to the loan obtained by the respondents were not produced on record by the applicant/bank and the respondent has been rightly acquitted by the trial Court.

6. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra"**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed

in Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally

interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

*15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867**, this Court observed:*

"This Court has repeatedly laid down 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 with an order of acquittal unless it comes to the conclusion that the entire 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 unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

7. Still further in **Criminal Appeal No(s.) 410-411/2015**

[Ravi Sharma Vs State (Government of N.C.T. of Delhi) and

another], decided on 11.07.2022, Hon'ble the Supreme Court has

held as under:-

"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding

*an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

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

8. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant application for leave to appeal is bereft of merit and without any substance; thus, it must fail. No case for interference has been made out. Consequently, the judgment dated 16.12.2021 passed by the Judicial Magistrate, 1st

Class-cum-Exclusive Court of Negotiable Instruments Act, Hisar, is ordered to be upheld.

9. Resultantly, with the above-said observations made, the application for leave to appeal stands dismissed.
10. Pending application(s), if any, is also disposed off.
11. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

04.09.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No