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# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

***CRA-AS-87-2023 (O&M)***
***Date of Decision*: *21.02.2023***

Ravinder Pannu …Applicant/Appellant

Versus

Seema Sharma …Respondent

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

Present : Mr. Jai Bhagwan, Advocate
for the applicant/appellant.

**HARSH BUNGER, J.**

***CRM-A-658-MA-2018*** has been filed under Section 378(4) of the Code of Criminal Procedure, for grant of leave to appeal against impugned judgment dated 15.01.2018, passed by the learned Judicial Magistrate First Class, Patiala, whereby the criminal complaint filed by the appellant under Section 138 of the Negotiable Instruments Act has been dismissed and the respondent (Seema Sharma) has been acquitted of the charges framed against her.

2. Briefly, the present applicant-appellant (complainant) through his attorney namely Gobinder Mittal filed a complaint under Section 138 of the Negotiable Instruments Act read with Section 420 of the Indian Penal Code against the respondent, wherein it was alleged that the applicant-appellant (complainant) was having friendly relation with the respondent/accused and the respondent/accused had taken financial assistance of Rs.60 Lakhs from the applicant-appellant (complainant) in the presence of Gobinder Mittal and in order to repay the amount of Rs.60 Lakhs, the respondent had issued 3 cheques of Rs. 20 Lakhs each in

favour of the applicant-appellant (complainant), all cheques dated 15.03.2012. It was alleged that the respondent/accused paid an amount of Rs. 20 Lakhs and all the abovesaid three cheques were returned to the respondent/accused, however, for the return of the balance amount of Rs. 40 Lakhs, the respondent/accused had acknowledged her previous loan and also issued cheques for the balance amount and an agreement dated 22.03.2012 was also executed in this regard between the parties. It was alleged that the amount of Rs. 40 lakhs was to be repaid in different installments mentioned in the agreement dated 22.03.2012 and a sum of Rs. 23 lakhs stood repaid, however, the balance amount of Rs. 17 lakhs plus interest for the delayed payment was payable by the respondent/accused and in order to discharge her partial liability, she issued a cheque bearing No.091364, dated 15.12.2015 for a sum of Rs.10 lakhs drawn on Andhra Bank from her account in favour of the applicant-appellant (complainant) with the assurance that the same would be encashed as and when presented to the banker. However, upon presentation, the said cheque was dishonored vide memo dated 08.01.2016 with the remarks "*Funds Insufficient*". Thereafter, legal notice dated 01.02.2016 was sent through the registered post calling upon the respondent/accused to make the payment within the prescribed period of 15 days. Since, the payment was not made by the respondent/accused, accordingly, the aforesaid complaint under Section 138 of the Negotiable Instruments Act was filed.

3. On the preliminary evidence, learned Judicial Magistrate First Class, Patiala summoned the respondent/accused, thereafter, the notice of accusation under Section 138 of the Negotiable Instruments Act was served upon the respondent/accused to which she pleaded not guilty and claimed trial.

4. In order to prove the guilt of the respondent/accused, the complainant examined himself as CW-1 and tendered the following documents:

| ***Sr. No.*** | ***Exhibits*** | ***Documents*** |
|---|---|---|
| *1.* | *C-1* | *Copy of special power of attorney.* |
| *2.* | *C-2* | *Copy of agreement.* |
| *3.* | *C-3* | *Original Cheque.* |
| *4.* | *C-4* | *Original Memo.* |
| *5.* | *C-5* | *Copy of legal notice.* |
| *6.* | *C-6* | *Postal receipt.* |
| *7.* | *C-7* | *Registered envelop.* |

5. Thereafter, the statement of the respondent/accused under Section 313 Cr.P.C. was recorded and all the incriminating evidence appearing against her was put to her, whereupon, she denied all the allegations and pleaded innocence and false implication. The following defense plea was taken by the respondent/accused:-

> *"I am innocent. A false complaint has been filed by the complainant against me. The true facts are that I took rs.40 lac as per agreement Ex.C2 and has returned the said amount i.e. Rs.43 lac (40 lac as principle, 3 lac as interest). Gobind Mittal has no personal knowledge regarding the facts of the present complaint and he has no personal knowledge regarding all transactions between me and the complainant as he was not present there. When all the accounts between me and the complainant was cleared then the complainant returned all the cheques which was also mentioned in Ex.C2. At that time the complainant was not in possession of cheque in question and he promised to return the same later on as I have full faith on the complainant I agreed but later on complainant in connivance with Govind Mittal misused the same and filed the present complaint on false ground. Nothing is due towards me from complainant as such I have no legal liability towards complainant. The cheque in question was without any legal*

*liability and complainant has misused the cheque. As such, I am liable to be acquitted."*

6. The learned trial Court, after appreciating the evidence, dismissed the complaint filed by the applicant-appellant (complainant) vide judgment dated 15.01.2018. Accordingly, the present appeal has been filed before this Court.

7. In the backdrop of aforementioned facts and circumstances, the application ***CRM-A-658-MA-2018*** for leave to appeal is allowed, whereupon, the appeal is numbered as ***CRA-AS-87-2023.***

8. I have heard learned counsel for the appellant/complainant and gone through the impugned judgment dated 15.01.2018 passed by learned Judicial Magistrate Ist Class, Patiala.

9. Here, it would be apposite to refer to few judicial pronouncements regarding the scope and parameters, in which, interference can be made in a judgment of acquittal.

10. In ***'Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479'***, Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

> *"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. Hon'ble Supreme Court in ***'Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748'***, Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

12. Coming to the case in hand, the learned trial Court after appreciating the evidence on record, observed as under:-

> *"15. As per complainant the initial loan transaction is of 60 lakh. But to the contrary, as per accused the loan transaction is only of Rs. 40 lakh and total payment of Rs. 43 lakh (including 3 lakh interest) has already been paid by the accused to the complainant. Firstly, it is pertinent to mention here that agreement dated 22/03/2012 exhibit C2/A (original) has been admitted by both the parties.*
>
> *Secondly, the complainant also admitted the receipt of Rs. 43 lakh in total from the accused Therefore, the bone of contention is whether the loan transaction is of Rs. 60 lakh or of Rs 40 lakh. It is incumbent for the complainant to prove the fact that the initial loan transaction is of Rs. 60 lakh. Perusal of the complaint reflects that no date has been mentioned by the complainant as to when amount of Rs. 60 lakh has been advanced. Secondly, there is documentary proof regarding advancement of Rs 40 lakh in the form of One Demand Draft of Bank of Baroda and 2 cheques of Rs 13 lakh each of Andhra Bank. The Photostate copy of demand draft and 2 cheques is placed on record. The same also finds mentioned in agreement dated 22/03/2012 exhibit C2/A. Had it been the case that the complainant makes advancement of Rs. 60 lakh than the same should also be through bank transfer through cheque or through demand draft. No explanation come from the side of the complainant as to why the amount of Rs. 20 lakh (60 lakh-40 lakh-20 lakh) was not advanced through any above referred mode of transfer. Further, there is no mention of advancement of Rs. 60 lakh, either in the agreement dated 22/03/2012 exhibit C2/A or in the legal notice. This is one of the most*

*strange and eccentric fact on the part of the complainant. Therefore, on the basis of discussion held above it seems more probable that the loan transaction is only of Rs. 40 lakh and not of Rs. 60 lakh.*

*16. Apart from this, there are so many improbabilities in the story of the complainant. For the sake of argument if the complainant's version qua advancement of Rs. 60 lakh is taken to be true then to secure that payment accused issued 3 cheque of Rs. 20 lakh each all dated 15/03/2012. Thereafter, accused made payment of Rs. 20 lakh and all the 3 cheques had been returned by the complainant. No sane person would return all the 3 cheques only upon the payment of Rs. 20 lakh. It is one of the improbable conduct on the part of the complainant. Further as complainant version at the time of execution of agreement dated 22/03/2012 some cheque, as mentioned in the agreement, was also handed over by the accused him to secure the payment of Rs. 40 lakh. If at that time cheques had been handed over to the complainant then why the cheque in question was again handed over to the complainant, as he already have the security cheques of the accused. Therefore, on the basis of above-mentioned unaccounted improbabilities the defence version of the accused seems to be plausible.*

*17. Beside this in order to prove her defensively accused examined DWI Ramesh Aggarwal, who deposed through his affidavit exhibit DWI/A to the effect that accused taken Rs. 40 lakh as per agreement dated 22/03/2012 in his presence and have also return the same alongwith interest of Rs. 3 lakh. Accused also examined Atma Singh as DW2 and DW3 Harwinder Kaur, who deposed through their affidavit exhibit DW2/A and exhibit DW3/A, respectively on the similar line as that of DW1. All these 3 witness were put on the anvil of cross-examination but nothing useful could be extracted from their cross-examination.*

*18. Further, it is pertinent to mention here that the complainant did not step in the witness box. The complainant appeared through his attorney namely Govinder Mittal.*

*Therefore, the opportunity is not available to the accused to ask question from the original complainant regarding the alleged family relationships between accused and complainant. Therefore, the existence of friendly relationship cannot be presumed automatically. If it is the case that there is no friendly relationship than how it can be believed that the alleged amount of Rs. 60 lakh has been advanced without the execution of any writing in this regard and without charging any interest. Further, the date/month/year has not been mentioned in the complaint as to when the alleged advancement of Rs. 60 lakh have been made. In Naresh Kumar versus Pardeep Kumar 2017(1) LAR, 210, it was held by Hon'ble Punjab and Haryana High Court that where No date, month and year mentioned in complaint as to when loan was given If amount was given for business purposes, then it looks unnatural that there were no terms and conditions to pay interest Further, no receipt or security document obtained at time of advancing such a huge amount No document placed on record by complainant to show this loan transaction Rs. 18 lakh is huge amount - Nothing on record to show that from where this amount has been given - No particulars of loan transactions mentioned by stating that at which place and in whose presence this amount was given - Moreover, no particular as to when loan was demanded back. Thus, presumption under Section 139 of Negotiable Instruments Act duly proved by raising probable defence by accused.*

*19. Therefore, in view of my above discussion the defence raised by the accused appears to be more probable. Accordingly the present complaint fails and accused is acquitted of the notice of accusation levelled against her.*

13. 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.

14. 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 15.01.2018 passed by learned Judicial Magistrate Ist Class, Patiala.

15. No other argument was raised.

16. In view of the above discussion, the instant appeal is bereft of any merit and the same is accordingly dismissed. The judgment dated 15.01.2018 passed by learned Judicial Magistrate Ist Class, Patiala is upheld.

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

**21.02.2023** **(HARSH BUNGER)**
*Himani* **JUDGE**

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