

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

CRM-20081-2019
CRM-20082-2019
in/and
CRM-A-1258-2019
Date of Decision: 15.05.2023

SADHVI GOVIND BHARTI

...Applicant

Versus

SHAMSHER SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Kinshuk Nanda, Advocate
and Ms. Deepika Chaudhary, Advocate
for the applicant.

HARSH BUNGER, J. (Oral)

CRM-20082-2019

This is an application under Section 391 read with Section 482 of the Code of Criminal Procedure for placing on record additional evidence of documents i.e. cross-examination statement of CW1 as Annexure A-1, Cheque bearing No.000233 dated 05.03.2017 as Annexure A-2, bank statement of complainant/appellant from 08.02.2017 to 12.04.2019 as Annexure A-3.

Criminal Misc. Application is allowed, as prayed for and Annexures A-1 to A-3, are taken on record, subject to all just exceptions.

CRM-20081-2019

This is an application seeking condonation of delay of 41 days in filing the accompanying application for grant of leave to file appeal.

For the reasons mentioned in the application, the same is allowed and delay of 41 days in filing the accompanying application for

grant of leave to file appeal is condoned.

Criminal Misc. Application stands disposed of accordingly.

CRM-A-1258-2019

The instant application has been filed under Section 378(4) of the Code of Criminal Procedure, for grant of leave to file appeal against impugned judgment dated 18.01.2019 passed by learned Judicial Magistrate Ist Class, Panipat, whereby, the criminal complaint filed by her under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') has been dismissed and the respondent/accused has been acquitted of the charges framed against him.

2. Briefly, applicant-complainant filed a complaint under Section 138 of the N.I. Act by stating that the respondent-accused took a friendly loan of Rs.4 lacs from her on 09.02.2017 for solemnizing the marriage of his daughter and the respondent-accused had promised to pay the said amount within a period of one month. It was alleged that after about one month, when the applicant-complainant demanded the aforesaid amount from the respondent-accused, then in order to discharge his legal liability, he issued a Cheque No.853101 dated 09.03.2017 for an amount of Rs.4,00,000/-, drawn at `Sarva Haryana Gramin Bank, Bastara, with the assurance that the said cheque would be honoured upon its presentation in the bank. However, when the afore-said cheque was presented by the applicant-complainant to his bank for encashment, the same got dishonoured with the remarks "Funds Insufficient" along with bank memo dated 15.03.2017. Thereafter, legal notice dated 29.03.2017 through registered A.D. was served upon the accused by the complainant, calling upon the respondent-accused to make the payment but neither he gave any

reply nor made any payment of the said cheque. Hence, the complaint under Section 138 of the N.I. Act was filed.

3. After preliminary evidence, the respondent-accused was summoned to face trial under Section 138 of the N.I. Act vide order dated 04.05.2017. Subsequently, he appeared in the Court; whereupon, notice of accusation under Section 251 of the Code of Criminal Procedure was framed and served upon him for offence under Section 138 of the N.I. Act vide order dated 24.07.2018, to which, he pleaded not guilty and claimed trial.

4. In pre-charge evidence, complainant-Sadhvi Govind Bharti, examined herself as CW-1 vide her affidavit Ex.CW1/A and thereafter, closed the evidence.

5. After conclusion of complainant evidence, the statement of the respondent-accused was recorded under Section 313 of the Code of Criminal Procedure and all the incriminating material was put to him. The respondent-accused also claimed to lead evidence in his defence.

6. In defence evidence, the respondent-accused did not produce any oral as well as documentary evidence.

7. The learned Judicial Magistrate Ist Class, Panipat, after appreciating the evidence, dismissed the complaint filed by the applicant-complainant and acquitted the respondent-accused vide judgment dated 18.01.2019.

8. In the aforementioned circumstances, the instant application has been filed by applicant-complainant, seeking leave to appeal, wherein it is stated that the accompanying appeal has been filed against judgment of acquittal, having good chances of its success on the basis of grounds mentioned therein. It is further stated that the acquittal of respondent has

caused a grave injustice, thus judgment of acquittal is required to be re-examined. Accordingly, it has been prayed that the application seeking leave to file appeal may be allowed and leave may be granted to the applicant to file appeal.

9. I have heard learned counsel for the applicant-complainant and gone through the paper book as well as impugned judgment dated 18.01.2019 passed by learned Judicial Magistrate Ist Class, Panipat.

10. 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.

11. 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.”

12. 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.

13. Coming to the case in hand, the learned trial Court, after

appreciating the evidence on record, observed as under:-

“16. As per the factual matrix of the present case the version of the complainant is that the accused had visiting terms with her in her Ashram and he used to call her Dharam Behen and he requested for an amount of 4 lac on 08.02.2017. On 09.02.2017 the complainant gave 4 lac rupees on credit basis and thereafter in discharge of his legal liability on 09.03.2017 he issued the present cheque in favour of the complainant but same got dishonoured and inspite of legal notice accused did not make the payment. In order to prove his case the complainant stepped into the witness box as CW1 and during her cross-examination it has come on record that she is residing in Ashram since 15-20 years and she does not have any source of earnings/livelihood except bagging. As per her version, she gave this amount to the complainant after borrowing from one Happy Partap on interest but aforesaid Happy Partap is not examined by her to substantiate her version and to prove her money transaction with him. Another version of the complainant is that after sometime she repaid the money of Happy Partap after borrowing from one Anubhuta Nand Giri, resident of Delhi but she could not depose her address in Delhi nor she could produce him in evidence as a witness in this court and therefore, the version of the complainant cannot be believed.

17. She herself not produce any of the bank account statement etc. to prove her paying capacity nor any proof of the payment is placed on record by her. Therefore, this court is not inclined to believe her version. Reliance can be placed on the authority of Hon'ble Supreme Court of India in

case titled as K. Prakashan Vs. P.K. Surenderan, 2007(4) CCC SC 713 wherein it is held by hon'ble Supreme Court that “complainant failed to show that he had any financial capacity to advance such a huge amount, accused deserves to be acquitted.” I am also relying upon the authority of Hon'ble Supreme Court of India in case titled as Vijay Vs. Laxman and Anr. 2013(2) SC 107 wherein it is held by the Hon'ble Court that dishonour of cheque, cheque issued towards repayment of loan, no document or other material brought on record to prove loan transaction- date of demand of loan and giving of loan not stated in the complaint, cheque was presented for encashment on the same date when it was issued, if the cheque was towards repayment of loan it is beyond comprehension as to why the cheque was presented by the complainant on the same date when it was issued, accused admitted his signatures and issue of cheque, but was able to prove that cheque was issued by way of security, conviction set aside”.

I am also relying upon the authority of Hon'ble Punjab and Haryana High Court in case titled as Punit Kumar Vs. Mohan Lal (Binder) reported as 2016(5) RCR(Criminal) 887, wherein it was held by the hon'ble High Court that No reasons why amount of ₹ 60,000/- has been given by him without getting executed any security document- Nothing on record to show any particulars of loan- No document to show the loan transaction between parties – Probable defence raised by accused as to misuse of cheque has been duly corroborated – Presumption under section 139 has been duly rebutted by the accused”.

18. On the other hand, the defence of the accused is that he did not borrow any money from

the complainant rather the complainant asked for his cheque because as per her version she has to pay money of some other person and she just wanted to show him the present cheque to assure him that in few days cash would be credited in her account so that he would not press her for making his payment. On this pretext of the complainant the accused gave his signed cheque to her but later on she misused this cheque. Although he did not adduce any evidence to substantiate his defence but it is held by Hon'ble Supreme Court of India in case titled as Rangappa Vs. Sri Mohan 2010(11) SCC 441, that presumption mandated under section 139 of the N.I. Act includes a presumption that there exists a legally enforceable debt or liability and that is a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. As regards the standard of proof for rebutting the said presumption, it was held that standard of proof so as to prove a defence on the part of an accused, is preponderance of probabilities and interference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties, but also by reference to the circumstances, upon which the accused relies.

It is also well settled law that to rebut the presumption the accused is not required to lead any evidence or examine himself as a witness and he can do so by elucidating sufficient material from the evidence of complainant itself to prove his defence.

Further in M/s Mahindra Hire Purchase (Regd.) through its Managing Partner Vs. Aswani Dada 2016(2) RCR(civil) 331 it was held that

whenever two views are possible, view which goes in favour of acquittal is to be followed by the courts.

19. In view of the aforesaid facts and circumstances, I am of the considered opinion that there is no substance in the present complaint and the present complaint is hereby dismissed. The accused is hereby acquitted. Bail bond and surety bond of the accused are discharged. File be consigned to the record room after due compliance.”

14. As per applicant-complainant, she allegedly gave Rs.4 lakh to respondent-accused on 09.02.2017 after borrowing the said amount from one Happy Partap, however, the said version of applicant was not believed because Happy Partap was not examined to substantiate the said stand of applicant-complainant. Rather, in cross-examination, applicant-complainant admitted that she is residing in Ashram since 15-20 years and she does not have any source of earning/livelihood. Another version of applicant-complainant was that she repaid money of Happy Partap after borrowing from one Anubhuta Nand Giri; however, said version of applicant-complainant was not believed as Anubhuta Nand Giri was also not examined. The applicant-complainant did not produce any of the bank accounts statement to prove her paying capacity nor any proof of payment was placed on record by her; accordingly, the trial Court did not believe the version of applicant-complainant.

15. Now, the applicant-complainant has filed an application under Section 391 read with Section 482 of the Code of Criminal Procedure, for additional evidence of document i.e.

(a) cross-examination of CWI-Sadhvi Govind as Annexure A-1.

(b) Cheque bearing No.000233 dated 05.03.2017 as Annexure A-2.

(c) Bank statement of applicant-complainant from 08.02.2017 to 12.04.2019 as Annexure A-3.

Coming to the afore-said additional evidence, Annexure A-1 is the cross-examination of applicant-complainant (Sadhvi Govind Bharti) in this very case, which was duly considered by trial Court.

By way of Cheque No.000233 dated 05.03.2017, applicant wants to show that she took a loan of Rs.4,00,000/- from person namely, Anubhuta Nand Giri to return loan amount of Happy Partap; however, a perusal of same would show that the said cheque is issued by “Akhand Param Dham” in favour of “M/s Anand Gobind Dham Ashram.”

Further, Annexure A-3 is claimed to be the bank account statement of applicant-complainant, however, a bare perusal of the same would show that the said accounts statement pertains to “ANAND GOBIND DHAM ASHRAM” and out of the said account, an amount of Rs.2,00,000/- is reflected to be given to Sadhvi Govind Bharti on 08.03.2017 and another amount of Rs.2,00,000/- is reflected to be given to Swami Anubhuta Nand on 24.03.2017; however, there is no entry in this account regarding payment of any amount to Happy Partap.

Be that as it may, there is also no document to show that the aforesaid account was being operated by applicant-complainant. Thus, the aforesaid documents Annexures A-2 and A-3 do not advance the cause/case of the applicant.

16. Thus, in no way, the findings can be held as perverse or against the evidence and law. Applicant-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.

17. 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 applicant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 18.01.2019 passed by learned Judicial Magistrate Ist Class, Panipat.

18. No other argument was raised.

19. In view of the above discussion, the instant application is bereft of any merit and the same is accordingly dismissed.

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

May 15th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No