IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANIDGARH

214

CRM-A-1704-2019
Date of Decision: 09.03.2023

D.P. KAUSHIK …..APPELLANT

Versus

MUKESH KUMAR YADAV
……RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanjay Verma, Advocate
for the petitioner.

*****

SANDEEP MOUDGIL (J)

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 02.05.2019, passed by the Judicial Magistrate 1^{ST} Class, Gurugam, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under section 138 of the Negotiable Instruments Act (for short ' the Act')

2. Factual Matrix of the case leading to the filing of present petition are that the complainant is a businessman who knew respondent well and respondent was in need of money so he approached complainant to lend him friendly loan. Complainant lent Rs.9,00,000/- to the respondent. In order to repay the same he issued post-dated cheque bearing no. 100600 dated 12.03.2016 in amount of Rs.9.00,000/- drawn on HDFC Bank Ltd., opposite Sector 10A, Khandsa Road, Gurugram in favour of complainant. But the said cheque got dishonoured vide memo dated 15.03.2016 with remarks "FUNDS

MEENU
2023.04.27 18:10
I attest to the accuracy and
authenticity of this document.

INSUFFICIENT”. Thereafter, a statutory legal notice was issued on 22.03.2016 and said complainant was filed accordingly.

3. Learned counsel for appellant contended that the learned trial Court dismissed the complaint without appreciating the fact that respondent-accused had duly admitted the cheque bearing no. 100600 dated 12.03.2016 was issued to the appellant and he does not dispute his signatures on the cheque. He further submits that appellant had lent a friendly loan of Rs.9,00,000/- to the respondent in March 2015. In order to repay said amount he issued post dated cheque in amount of Rs.9,00,000/- drawn on HDFC BANK Ltd., opposite sector 10A, Khandsa road, Gurugram in favour of appellant. But the said cheque was dishonoured vide memo dated 15.03.2016 with remarks “funds insufficient”. He further asserts that Ld. Trial court has wrongly and illegally held that appellant has not produced the record pertaining to his school for the year 2010-2011 regarding UKG and LKG and therefore adverse inference has been drawn against the appellant. It is pertinent to mention here that respondent has taken the false defence and has submitted that respondent do not know the complaint whereas in the sale deed pertaining to the execution of the school respondent signed as a witness. The sale deed dated 24.08.2009 shows that he was having relation with the appellant.

4. I have heard learned counsel for the appellant and gone through the record.

5. The respondent in his statement under section 313 Cr.PC, 1973 denied the incriminating materials put by the appellant, however admitted the fact that the cheque in question bears his signature. He further submits that he does not owe any legal liability towards complainant and stated that appellant

MEENU
2023.04.27 18:10
I attest to the accuracy and
authenticity of this document.

witness has deposed falsely. The respondent has taken a defence that the cheque in question was given as a blank signed cheque to the appellant for the payment of pending school fees of his son Alek Yadav and the same has been manipulated and misused. There is no written acknowledgment/pronote to show that accused had borrowed Rs.9,00,000/- from complainant. Further reliance can be placed upon the judgement rendered by this court in "***CRM-A-492-MA-2012 titled as Suresh versus Narender Gautam"*** wherein it was held that if the complainant fails to prove his claim through any receipt or pronote advanced by him to the accused then presumption of innocence goes in favour of the accused. The complainant has placed on record his bank account as Ex.P5 perusal of which doubts the financial capacity of the complainant to advance a sum of Rs.9,00,000/- as in March the Balance amount in the bank of complainant was shown to be only around Rs.2,10,000/-.

6. Perusal of the file shows that the signature on the cheque and rest of the body of cheque is filed in different ink. It suggest that the body of the cheque was filed at a different time and cheque was signed at some other time which renders the case of the appellant weak.

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.

MEENU
2023.04.27 18:10
I attest to the accuracy and
authenticity of this document.

8. On perusal of the judgment passed by the trial Court dated 02.05.2019, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

9. Accordingly, the leave to appeal stands declined.

10. Dismissed.

(SANDEEP MOUDGIL)
13.03.2023 **JUDGE**
Sham

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No

MEENU
2023.04.27 18:10
I attest to the accuracy and
authenticity of this document.