

207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-A-1330-2019

DATE OF DECISION:-01.12.2023

Haryana Karnataka Roadways thr. its Proprietor  
Sh. Anil Kumar

...Applicant.

Vs.

Ishwar Garg

...Respondent..

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Rajesh Lamba, Advocate with  
Mr. Navneet Singh, Advocate,  
for the applicant.

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**HARKESH MANUJA, J.**

1. Present application has been filed under Section 378 (3) Cr.P.C., for grant of leave to appeal against judgment of acquittal dated 02.05.2019 passed by the Judicial Magistrate Ist Class, Chandigarh, whereby respondent has been acquitted of the charges under Section 138 of the Negotiable Instruments Act, 1881 (for short, "1881 Act").

2. Facts leading to the present case are that on account of dishonour of cheque bearing No.052025 dated 01.04.2017, amounting to Rs.14,70,000/-, drawn on Baghat Urban Cooperative Bank Ltd., B.O. Nahan, District Sirmour (Himachal Pradesh), respondent was arrayed as an accused in a complaint bearing No.5329 dated 06.07.2017, titled as ***"Haryana Karnataka Roadways thr. its Proprietor Anil Kumar vs Ishwar Garg"*** filed under Section 138 of 1881 Act.

3. In order to prove his case, complainant entered into the witness

box as CW-1 and tendered his affidavit Ex.CW-1 along with documents Ex.C1 to Ex.C10. Thereafter, statement of respondent-accused was recorded under Section 313 Cr.P.C., wherein, he denied the allegations being incorrect, pleaded innocence and false implication. Respondent was called upon to lead his evidence and in his defence, he examined Shivam Garg, Accounts Branch, Sangsharmann Plast Pvt. Ltd. Kala Amb, District Sirmour (HP) as DW-1 and closed his evidence.

4. On appreciation of evidence and after hearing arguments advanced by learned counsel for both the parties, the Trial Court acquitted the respondent vide its judgment dated 02.05.2019. The present application for grant of leave to appeal against aforesaid judgment has been filed by raising various grounds.

5. Learned counsel for the applicant submits that the Trial Court has failed to consider the evidence properly, as in his cross-examination, the complainant admitted that his brother looks after the accounts & the hiring of persons as he is expert in accounting, thus, no adverse inference should have been taken in this regard. He further submits that the applicant is a rustic person and got into the trap of the respondent, who took loan from him and gave the cheque of his firm and thus, the Trial Court has wrongly acquitted the respondent.

6. Having heard the arguments advanced by learned counsel for the applicant besides having gone through the judgment passed by the Trial Court and other documents available on the file, I am unable to find any substance in the submissions made on behalf of the applicant.

7. As per the version of applicant-complainant, the respondent contacted him for providing vehicles for his products in his factory and raise

the invoices on credit basis and on his request, the applicant delivered the transport vehicles on credit basis, but in his cross-examination, he deposed that he never provided any facilities of any kind to accused No.1 in his personal capacity and his entire dealings of providing transport was with the company run by accused No.1. He also admitted that he does not have any personal knowledge about the documents/statement Ex.C-2, his brother can only tell. Though, complainant's brother-Prem Lal also stepped into witness box as CW-2, but he did not say anything about the present complainant and even failed to prove his version. Moreover, there was no evidence on record to show, who possesses the knowledge about the cheque in question and who actually was the Director of the said company.

8. In view of the aforementioned observations, I do not find any illegality or perversity in the judgment of acquittal passed by the Trial Court. In **“Arulvelu & another v. State represented by the Public Prosecutor & another”**, reported as 2009(4) RCR (Criminal) 638, the Hon'ble Supreme Court has laid down the following guidelines for the appellate court while dealing with cases where trial court acquitted the accused:-

*"1. The accused is presumed to be innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*

*2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*

*3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanor of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*

*4. The appellate court may only overrule or otherwise disturb*

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*the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

*5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/ appellate courts must rule in favour of the accused.*

*6. An order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing out the finger towards the accused.*

*7. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*

9. In the light of aforesaid guidelines, I have examined the judgment of the Trial Court and the reasoning given by it for the acquittal of the respondent. In the facts and circumstances of the present case based on the evidence available on record, the Trial Court, after properly appreciating the evidence, has rightly come to the conclusion that the complainant has failed to prove the case against the respondent beyond all reasonable doubts. The view taken by the Trial Court is not in any way unreasonable, perverse or impossible, rather, in the facts and circumstances of the case and the evidence led by both the parties, no second view is possible and plausible. The Trial Court has rightly held that cheque in question was not issued by the accused-respondent in discharge of any legally enforceable debt.

10. In view of the discussion made herein above, there being no illegality or perversity in the reasoning recorded by the trial Court, I do not find any ground to grant leave to appeal against its judgment dated 02.05.2019. Hence, the present application is dismissed.

01.12.2023  
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(HARKESH MANUJA)  
JUDGE

whether speaking/reasoned: Yes/No  
whether reportable: Yes/No