

CRM-A-235-2022 (O&M)
Date of Decision:04.09.2023

...Applicant

...Respondents

Present: Mr.L.S. Sidhu, Advocate
for the applicant.

N.S.Shekhawat J.

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 50 days in filing the application for grant of special leave to appeal.

2. I have heard learned counsel for the applicant and perused the record.

3. For the reasons mentioned in the application, the delay of 50 days in filing the application for leave to appeal is ordered to be condoned.

1. The applicant has filed the present application under Section 378(4) Cr.P.C with a prayer to grant special leave to appeal against the impugned judgment dated 28.01.2020 passed by the Court of JMFC, Mansa whereby, the respondent has been ordered to be acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the “Act”).

2. The applicant/complainant had filed the complaint in the present case under Section 138 of the “Act” by alleging that the respondent/accused had borrowed a sum of Rs.4,50,000/- from him on 15.05.2016 and in discharge of legal liability, the respondent had issued cheque bearing No.480557 dated 06.06.2016 for an amount of Rs.4,50,000/-, drawn on Corporation Bank Branch Mansa, in favour of the applicant from his account bearing No.CPSB 1493 of the said bank. While issuing the said cheque, the respondent assured the complainant that the said cheque would be honoured by the banker of the respondent on presentation. When the applicant presented the said cheque to its bank, Corporation Bank, Branch Mansa on 12.07.2016, but the same was dishonoured and returned unpaid by the banker of the respondent vide memo dated 12.07.2016 with the remarks “Funds Insufficient”. On receipt of the dishonoured cheque and memo of the banker, the applicant got a legal notice dated 27.07.2016 served through his counsel, calling upon the respondent to make the payment of the amount of cheque within a period of 15 days, but no effect and the applicant was constrained to file a complaint under the “Act” against the respondent.

3. After holding the trial, the Trial Court held that the applicant/complainant had failed to establish on record that the cheque in question was issued by the respondent in discharge of any legal liability. Even the transaction of the amount of loan, has alleged was not even proved and there was no existing liability.

4. Learned counsel for the applicant submitted that the respondent had not even remotely suggested to CW-1, Jugraj that a blank cheque was issued by the respondent. Even the respondent failed to send any reply to the

legal notice sent by the applicant and the presumption under Section 118 and 139 of the Act could easily withdrawn and the respondent had completely failed to rebut the said presumption. Learned counsel for the applicant further submitted that since the signatures had not been disputed by the respondent, the presumption under Section 139 of the Act would operate and the respondent had failed to disprove the existence of legally recoverable debt.

5. I have heard learned counsel for the applicant and perused the record carefully; with his able assistance.

6. In fact, the law is well settled that the presumption mandated by Section 139 of the Act includes a presumption that there exists a legally enforceable debt or liability. However, the said presumption can be rebutted by the accused by leading evidence and can also be rebutted by the accused by referring to the evidence led by the complainant as well. In the present case, the case set up by the applicant was that on 15.05.2016, the respondent had borrowed a sum of Rs.4,50,000/- from the applicant. However, neither any writing was executed in this regard nor any pronote or receipt was executed between the parties. Even the applicant had clearly deposed that earlier also the respondent had taken loan from the applicant, but he could not disclose the amount of loan earlier granted to the respondent. Still further it was highly unbelievable that a sum of Rs.4,50,000/- was given by the applicant to the respondent without execution of any document. Still further, the respondent had examined DW-1 Varun Kharour, who had brought the record relating to the loan file of Corporation Bank and from the same, it is evident that the respondent had taken a loan of Rs.15,000/- in the year 2015 and at the time of availing the loan, the applicant Jugraj Singh was the introducer of the

respondent to the bank. Even the loan amount of Rs.15,000/- taken by the respondent was to be returned by him in the instalments of Rs.1027/- per month for 15 months. Thus, even the applicant was well aware of the financial status of the respondent, who had availed the loan of Rs.15,000/- from the Corporation Bank and it is highly unbelievable that the applicant had extended the loan amount of Rs.4,50,000/- to the respondent without executing any receipt and pronote etc.

7. Still further, it has also come on record that the respondent had proved on record the pronote Ex.D-2 and the receipt Ex.D-3, from which it could be seen that the applicant himself had taken a loan of Rs.3 lacs from one person namely Malkeet Singh on 20.10.2013. Even a compromise deed Ex.D-1 was executed between the present applicant and said Malkeet Singh on 16.06.2016. In fact, when the applicant could not return the amount of Malkeet Singh, he filed a civil suit against the applicant and the applicant entered into a compromise with Malkeet Singh on 16.06.2016. Thus, it is apparent that in the year 2016, the applicant was not in a position to extend the loan of Rs.4,50,000/- to the present respondent as loan of Malkeet Singh against the present applicant was still outstanding in the year 2016.

8. I have perused the impugned judgment passed by the Trial Court and the Trial Court has correctly held that the respondent/accused had successfully rebutted the presumption under Section 139 of the Act. The Trial Court correctly held that the version of the applicant regarding the alleged loan was surrounded by doubt and the respondent had succeeded in raising the probable defence. Still further, the defence raised by the respondent seemed probable that the respondent had taken the loan in the year 2016 and the

applicant was the introducer in the Corporation Bank. Consequently, there was a possibility that the applicant had taken the cheque from the respondent, which was later on misused by him. Thus, the impugned judgment does not suffer from any material irregularity, illegality or perversity and is liable to be upheld.

9. 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."

10. 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.”

11. 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 impugned judgment dated 28.01.2020 passed by the Court of JMIC, Mansa is ordered to be upheld.

12. Resultantly, with the above-said observations made, the application for special leave to appeal stands dismissed.

(N.S.SHEKHAWAT)
JUDGE

04.09.2023
hitesh

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