

CRM-32269-2016 IN/AND
CRM-A-1861-MA-2016(O&M) AND
CRM-32292-2016 IN/AND
CRM-A-1873-MA-2016 (O&M)

212 (2 cases)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: September 01, 2023
CRM-32269-2016 IN/AND
CRM-A-1861-MA-2016 (O&M)

1.

Risal Singh
....Applicant
versus

Kali Ram
....Respondent

2. CRM-32292-2016 IN/AND
CRM-A-1873-MA-2016 (O&M)

Risal Singh
....Applicant
versus

Kali Ram
....Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- None.

ARUN MONGA, J. (ORAL)

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For the reasons stated in applications, same are allowed. Delay of 23 days in filing applications seeking leave to appeal is condoned, subject to all just exceptions.

Main cases (O&M)

Vide this common order, above-mentioned applications are being disposed of. For brevity, recitals/facts are from CRM-A-1861-MA-2016.

2. Applications herein have been filed under Section 378 (4) of Code of Criminal Procedure, 1973 (for short ‘Cr. P.C.’) for grant of leave to appeal against judgment dated 14.07.2016 passed by learned Judicial Magistrate First Class, Karnal whereby complaint filed by applicant against respondent-accused for commission of offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short ‘NIA Act’), was dismissed and respondent was acquitted of the allegations levelled against him.

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3. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:

“2. Laconically, the present complaint has been filed by the complainant with the averments that the complainant is a farmer by profession. In the year 2014, complainant had sold 3Bigha-14Biswa land to Daya Singh son of 'Phulla Ram, for a total sale consideration of Rs.12,50,000/- (Twelve Lacs Fifty Thousand only) and the possession of the said land was also delivered to him at the spot. The complainant had received an amount of Rs.4,40,000/- (Four Lac Forty Thousand only) and remaining payment was not made by him. When complainant protested about the remaining amount, he came to know that the same has already been given by Daya Singh to the accused. The accused is the nephew of the complainant and in good faith said Daya Singh paid the remaining amount to him because the accused told him that the complainant is an old aged person and is suffering from various ailments and is unable to come to his house but the accused did not pay the said amount to the complainant. In this regard, a panchayat was convened and accused promised to pay the said amount within one week but he did not pay the same. Thus, the complainant left with no other alternative, so he made a complaint to SHO, CIA-2, Karnal and then before SHO, CIA-2, Karnal, in discharge of his this legal liability, he issued two cheques of Rs.2,50,000/-(Two Lac Fifty Thousand only) each and assured that the same would be honoured positively on presentation. Accordingly, the complainant presented the cheque bearing no.052973 dated 22.06.2015 of Rs.2,50,000/- (Two Lac Fifty Thousand only), however, the same was returned by the bank with remarks "**Funds Insufficient**", vide memo dated 23.06.2015 respectively. After that, the complainant served a legal notice dated 25.06.2015 on the accused. The complainant asked him to make payment of cheque amount within 15 days from the receipt of the same but neither he gave any reply to the legal notice nor he did pay the cheque amount to the complainant and as accused knowingly and willfully did not honour the said cheque with malafide intention and in this way, he has committed an offence under section 138 of Act. Hence, the present complaint.”

4. It is contended in the application that respondent had admitted the signatures on the cheque in question and did not deny the same, but learned JMIC, Karnal did not appreciate true facts of the case and dismissed the complaint of applicant/complainant and wrongly acquitted accused of the charge against him. It is further contended that leaned JMIC wrongly decided that there is no liability towards the applicant whereas respondent knowingly and admittedly gave cheque of the amount in question to applicant/ complainant and was fully aware of his liability.

5. After appreciating the evidence on record, vide impugned judgment dated 14.07.2016, learned Court below dismissed the complaint filed by the applicant-complainant.

6. Aggrieved, applicant preferred an appeal before learned Additional Sessions Judge, Karnal which too was dismissed being not maintainable, vide order dated 29.07.2016.

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7. Still aggrieved, applicant-complainant filed the present application seeking leave to appeal against aforesaid impugned judgment.

8. Vide order dated 31.10.2017 passed by a co-ordinate Bench of this Court then seized of the matter, it was observed that applicant had expired and learned counsel sought time to have instructions. Thereafter, case has been adjourned from time to time, when none caused appearance on behalf of the applicant, except on one date of hearing i.e., 23.05.2018 when too, case was adjourned on the request of learned counsel for applicant. On resumed hearing, none appears on behalf of applicant as well as respondent. The instant application seeking leave to appeal is liable to be dismissed on that short ground alone. However, even on merits, the applicant has no case at all.

9. I have gone through the submissions in application and perused the case file.

9.1. Impugned order dated 14.07.2016 is, *inter alia*, premised on the following reasoning:

“20. *In this case, the complainant was required to prove on record that the cheque in question was issued by the accused in discharge of his legal liability. Before proceeding further, it becomes imperative to peruse the provisions of Section 138 of the NI Act, which provides that to constitute an offence, thereunder, the following ingredients are required to be fulfilled:-*

(i) *A person must have drawn a cheque on an account maintained by her in a bank for payment of a certain amount of money to another person from out of that account.*

(ii) *The cheque should have been issued for the discharge, in whole or in part, of any debt of other liability.*

(iii) *That cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.*

(iv) *That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement within the Bank.*

(v) *The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by her from the bank regarding the return of the cheque as unpaid.*

(vi) *The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.*

21. *It is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under section 138 of the Act.*

22. *As discussed above, as per Section 138 NIA, the cheque should have been issued by a person for the discharge, in whole or in part, of any*

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debt or the liability. The existence of debt or any legally enforceable liability is a condition precedent. In the case in hand, it culled out from the record that the primary liability was against one Daya Singh as he has purchased the land of complainant and was required to pay him sale consideration. The complainant was required to prove that remaining amount of sale consideration was paid by Daya Singh to accused for further giving it to the complainant as alleged because the accused has very categorically denied the said fact. However, the complainant did not prove the same. He could have examined Daya Singh to prove the said fact. However, he did not summon him as a witness to support his case. He could have brought the true picture before the court and also could have clarified the fact that whether he has given the remaining sale consideration to the accused or not but he was not examined. Similarly, allegedly a panchayat was convened by the complainant in this regard, wherein, it has been alleged that the accused has admitted his liability. The complainant has specifically named the persons who participated in the said panchayat, however, none of them have been examined to prove the said factum.

23. *Further, the police official in whose presence the compromise was effected and the cheques were given by the accused have not examined.*

24. *Not only this, neither, the copy of sale deed of land which has been given allegedly sold by the complainant to Daya Singh has been placed on record nor anything qua the compromise has been reduced into writing. In such circumstances, though, it is clear on record that the accused has issued the cheque in question to the complainant, however, the offence under Section 138 of the Act is not made out as there was no legally enforceable debt & liability against him. The complainant has failed to prove the said fact on record that Daya Singh has ever paid the remaining sale consideration to the accused as alleged by the complainant.*

25. *The upshot of the above discussion is that, the present complaint of the complainant is hereby dismissed and the accused present in the court is hereby acquitted of the accusations leveled against him. His bail bonds and surety bonds stand discharged. Fresh personal bonds as per the amended provision of Section 437-A of Cr.P.C are obtained from the accused which would remain in force for six months to secure his presence before the learned Appellate Court if need be, if any appeal against this judgment is preferred by the prosecution-complainant. File be consigned to the Record Room after due compliance.”*

9.2. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

10. That apart, it is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their 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.

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11. In **Anil Kumar Gupta vs. State of U.P.**², it was held as under:

*“This Court held 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 an order of acquittal unless it comes to the conclusion that the 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. **Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.***

(emphasis supplied)

11. This Court following the decision in *Ramesh Babulal Doshi*, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.”

12. In this case, I am of the opinion that findings recorded by learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.

13. Instant applications seeking leave to appeal are hereby dismissed.

14. Pending application(s), if any, shall also stand disposed of.

15. A photocopy of the order be placed on the connected case file.

(ARUN MONGA)
JUDGE

September 01, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

² 2001(2) RCR(Criminal) 292 SC