

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

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**CRM-A-39-2020 (O&M)
Date of Decision: 08.08.2023**

Parshottam Lal

...Petitioner

Vs.

Rajinder Singh

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

CRM 41 of 2020

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 813 days in filing the application for leave to appeal.

2. Learned counsel for the applicant submits that vide judgment dated 03.06.2017, the Court of Judicial Magistrate 1st Class, Moga, had acquitted the respondent. The applicant/complainant preferred an appeal before the Court of Sessions Judge, Moga and vide judgment dated 29.08.2019, the Court of Additional Sessions Judge, Moga, held that the appeal was not maintainable and the appeal against the order of acquittal lies only before this Court. Consequently, the appeal was ordered to be dismissed. After the dismissal of the appeal by the Court of Additional Sessions Judge, Moga, the applicant preferred an application for leave to appeal

before this Court and in this process, the delay of 813 days had occasioned.

3. I have heard learned counsel for the applicant/appellant and for the reasons mentioned in the application, the same stands allowed. Delay of 813 days in filing the application for leave to appeal is ordered to be condoned.

CRM-A-39-2020

1. The applicant has moved the present application with a prayer to grant the special leave to appeal against the impugned judgment dated 03.06.2017 passed by the Judicial Magistrate 1st Class, Moga, whereby, the respondent was ordered to be acquitted of notice of accusation under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter to be referred as '**the Act**'). As per the applicant/complainant, the respondent/accused had borrowed a sum of Rs. 1,75,000/- from the applicant in the month of December 2013, which was agreed to be returned alongwith interest @ 18% per annum. As per the applicant, the respondent had executed a pronote and a receipt in his favour in order to secure the said loan amount and to clear the legal liability, the respondent issued a cheque bearing No. 502342 dated 31.10.2015 drawn on Bank of Baroda, Branch Moga, for a sum of Rs. 1.92 lacs, in favour of the applicant. However, on presentation, the said cheque was dishonoured with the remarks "funds insufficient" vide memo dated 11.03.2015 and statutory notice

was thereafter issued by the applicant on 31.03.2015. However, in spite of legal notice, the respondent failed to pay the amount claimed in the notice and the applicant was left with no remedy except to file the complaint in question.

2. Learned counsel for the applicant vehemently argued that in the present case, the applicant had led sufficient evidence to show that the cheque was issued by the respondent in discharge of legal liability and once there was no denial of the said fact, the presumption under Section 139 of the Act would come to the rescue of the complainant and would prove the case against the respondent/accused. In fact, the applicant had led sufficient and convincing evidence to discharge the burden and after discharge of the same, there was a strong statutory presumption in favour of the applicant. However, by completely overlooking the evidence led by the applicant and the mandatory provisions of the Act, the impugned judgment has been passed by the trial Court, which is apparently unsustainable.

3. I have heard the learned counsel for the applicant and deliberated on the detailed submissions made by the learned counsel for the applicant and perused the record

4. The main submissions raised by the learned counsel for the applicant is with regard to the presumption envisaged under Section 139 of the Act and to take shelter of the said statutory

presumption, the applicant was under a bounden duty to set up a plausible case with the help of the cogent evidence, which would establish that the cheque in question was legally issued by the respondent in discharge of legal debt or liability. From a perusal of the evidence, it is apparent that a vague averment has been made by the applicant/complainant that a sum of Rs. 1,75,000/- was borrowed by the respondent in the month of December 2013. First of all, the complainant did not try to explain the kind of relationship, he shared with the respondent. The complaint is vague with regard to the fact as to whether the respondent was a friend or a business partner or was having some kind of dealings with the applicant. Apart from that, the trial Court rightly observed that no specific date, time, place or purpose of loan amount had been referred in the complaint. A general and unspecific averment has been made that the respondent had borrowed a sum of Rs. 1.75 lacs in December 2013. This kind of unconvincing and shoddy evidence of the prosecution can never be made the basis of the conviction, when the applicant was saddled with the burden of proving the offence beyond the shadow of reasonable doubt.

5. Apart from that, the applicant had tried to set up a case after taking amount of Rs. 1.75 lacs, the respondent/accused had also executed a pronote and receipt in favour of the applicant, allegedly to secure the loan amount. In fact, the alleged pronote and receipt were

the best evidence, which could help the applicant/complainant in setting up a case against the respondent. However, the trial Court rightly observed that a very undigestable explanation had been offered by the applicant by stating that he had returned the pronote and cheque to the respondent and even did not bother to retain a copy of the same with him. First of all, it is unbelievable that even a person with average mental prudence would return the cheque and pronote to the person executing the same, secondly, it is equally unbelievable that he even did not bother to retain a copy of the same. At the same time, the defence taken by the respondent/accused seems to be more plausible. As per the respondent, he had lost the disputed cheque, which might have been found by the applicant and he had misused the said cheque without any liability towards him. To substantiate his stand, the respondent examined DW1 Constable Charanjit Singh from Police Station City Moga, who proved the DDR No. 11 dated 07.08.2013, got lodged by the respondent regarding the loss of the cheque, Ex.DW1/A, which is the subject matter of the present controversy. The said witness was cross-examined at length and the applicant could not elicit anything, which could cause a cloud of suspicion on his testimony. Even otherwise, I have perused the judgment passed by the trial Court and found no reasons to deviate from the same. The trial Court has discussed the evidence led by both the sides in detail and after correct appreciation and deliberation on

the submissions made by both the sides, the impugned judgment has been based on correct interpretation of law.

13. 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."

14. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment passed by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence by the trial Court.

15. Sequally, the application sans merit and is accordingly ordered to be dismissed.

16. All pending applications, if any, are disposed off, accordingly.

08.08.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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