

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

CRM-A-2825-2019

Date of Decision: 09.01.2023

Jai Kishan

..... Applicant

Versus

Deepak

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Saurabh Dalal, Advocate, for the applicant.

Rajesh Bhardwaj, J.

The applicant has filed the application under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned order dated 06.09.2019, whereby, the learned trial Court dismissed the complaint filed by the applicant-complainant and acquitted the respondent-accused from the allegations made therein.

Adumbrated facts of the case are that the complaint under Section 138 of the Negotiable Instruments Act was filed against the respondent. It was alleged that the respondent had approached the complainant for a friendly loan of Rs.18 lacs. On his request, the complainant gave him a loan of Rs.18 lacs and as a security, the respondent handed over to him a cheque bearing No.443206 dated 05.12.2014 of Rs.18 lacs. However, on presentation of the same by the complainant in the Punjab National Bank, Dulhera, Bahadurgarh, the cheque was returned dishonored for reasons "Funds insufficient and drawer signatures differ", which was conveyed to the complainant by the Bank. Thereafter, the complainant approached the respondent, namely, Deepak and made request and even sent legal notice dated 07.01.2015 calling upon him to clear the cheque amount and finding no result, the present complaint was instituted. The trial Court

after a thorough trial found no merit in the complaint filed and thus, acquitted the respondent-accused by dismissing the complaint vide its impugned order dated 06.09.2019. Aggrieved by the same, the applicant-complainant has approached this Court by way of filing the present application for grant of leave to appeal.

It has been contended by learned counsel for the applicant that the learned trial Court has passed the impugned order on the basis of surmises and conjecture. He submits that the applicant-complainant advanced friendly loan of Rs.18 lacs to the respondent for which the respondent duly handed over a signed cheque to him and on the presentation of the same, the cheque was dishonored for the reasons “funds insufficient and drawer signatures differ”. He submits that once the cheque is issued by the respondent-accused, there was a presumption against the accused that he had issued the same in order to discharge the legal liability. However, the learned trial Court dismissed the complaint in contravention to the statutory provisions and the law settled. He submits that the finding of the trial Court that the applicant-complainant could not remember some dates, was not the material to dismiss the complaint filed by him. He submits that the complainant and the respondent had a very long association, on account of which, the complainant gave him a friendly loan of Rs.18 lacs. He submits that the findings of the learned trial Court are totally perverse and thus, leave to appeal be granted by allowing the present application.

Heard.

The applicant-complainant filed the complaint on the basis of the contentions as mentioned above. The learned trial Court recorded preliminary evidence, wherein, the complainant appeared as CW-1 and

besides this documentary evidence was also produced. Statement of the respondent-accused was recorded under Section 313 Cr.P.C. and he also led his defence. On appreciation of the arguments advanced by both the sides and evidence led, it was found that the applicant-complainant had shown his source of income for advancing of loan of Rs.18 lacs from the sale deed of his house. The sale deed proved the total sale consideration as Rs.15,89,600/-, however, the alleged loan advanced was of Rs.18 lacs. The applicant-complainant could not show any income tax return for proving his income to authenticate the loan advanced by him to the respondent. Once, the complainant failed to show his source of income, the advancement of loan of Rs.18 lacs became seriously doubtful. During his cross-examination, the complainant showed ignorance regarding contents of his affidavit filed. It was further alleged by the complainant that loan was advanced in the presence of his uncle Hawa Singh, but he was not examined. Non-examination of Hawa Singh also creates a serious dent in the case of the complainant. It was contended by the complainant that his relation with the respondent-accused was since long, however, he could not tell the details of the relationship with the respondent-accused. As per the law settled, the appeal against conviction and that against acquittal rests entirely on different pedestal. In case of acquittal, it has been held by Hon'ble Supreme Court repeatedly that if there are two views possible in a given case, then, the one favouring the accused should be adopted. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per the law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there lies double presumption of innocence in his favour. Hence, an Appellate Court should not disturb in a cavalier

manner the findings arrived at by the trial Court resulting in acquittal of accused and it is only in case of perversity of the findings, the Appellate Court should interfere in the acquittal order passed by the trial Court. In **Jafarudheen and others vs State of Kerala** 2022 SCC Online SC 495, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., 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.”

Weighing the facts and circumstances of the present case on the anvil of law settled, this Court finds no perversity in the order passed by the trial Court. Resultantly, the present application for grant of leave to appeal is dismissed.

09.01.2023		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned	: Yes/No
	Whether Reportable	: Yes/No