

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

228

CRM-A-1835-MA-2018 (O&M)

Date of Decision: 25.05.2023

**SADA RAM SHARMA**

... Appellant

**VERSUS**

**SATYA NARAIN SHARMA**

... Respondents

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

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Present: Mr. Rajiv Sharma, Advocate for  
Mr. O.P. Sharma, Advocate  
for the appellant.

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**SANDEEP MOUDGIL, J. (ORAL)**

**CRM-31105-2018**

This is an application for condonation of delay of 40 days in  
filing the accompanying appeal.

For the reasons mentioned in the application, the same is  
allowed subject to all just exceptions.

**CRM-A-1835-MA-2018**

By way of filing present application under Section 378(4)  
Cr.P.C. the applicant-appellant has sought leave to file appeal against the  
judgment dated 24.04.2018, passed by the Judicial Magistrate Ist Class,  
Sonipat, dismissing the complaint and acquitting the respondent-accused  
therein of the notice of accusation served upon him under Section 138 of the  
Negotiable Instruments Act (for short 'the Act').

It is contended that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the trial Court held the applicant-appellant has failed to prove his financial capacity enabling him to lend a huge amount of Rs.35,00,000/- to the respondent-accused. It has also been held that the respondent-accused has successfully rebutted the presumption raised against him under Section 139 of the Negotiable Instruments Act, 1881. Such findings are erroneous, baseless, without application of judicial mind and as such, the same deserves to be set aside. It is further contended that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque. It is well settled position in law that once an accused admits his signatures on the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but inspite of that, the trial Court returned a finding of acquittal while dismissing the complaint of the applicant-appellant. It is further submitted that the trial Court has erroneously based its finding regarding the financial capacity of the complainant, whereas he has specifically produced on record the copies of sale deeds Ex.C14, Ex.C16 and Ex.C17 vide which he had sold his plot worth Rs.28,00,000/-, which was further advanced by the applicant-appellant to the respondent-accused. Furthermore, the applicant-appellant has produced the copy of his statement of account also, which duly establish the financial capacity of the applicant-appellant to lend a sum of Rs.35,00,000/- to the respondent-accused. Even more, the applicant-

appellant has retired as Class-I Officer from Haryana Government and has four acres of agricultural land. However, the trial Court failed to appreciate such a cogent and convincing evidence. It is further contended that certain arguable points are involved in the present case, which need to be determined after hearing the parties on merit. Further, despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 24.04.2018 is liable to be set aside.

Heard.

I have perused the impugned judgment carefully and have also gone into the findings recorded by the trial Court meticulously. Upon perusal of the same, I do not find any perversity or illegality therein. It is the specific stand of the respondent-accused that he had issued the cheque in question in lieu of the sale consideration for a plot, which he wanted to purchase from the applicant-appellant. However, the applicant-appellant failed to perform his part of contract and consequently, the cheque in question was dishonoured. A panchayat was also convened between the parties in the presence of Jagmohan, Dharampal, Deepak and Suresh at his house, where the applicant-appellant agreed to perform his part of contract and in lieu of that, the respondent-accused issued a fresh cheque No.882368 in favour of the applicant-appellant. But later on, the respondent-accused came to know that the plot in question is a disputed land and is subject matter of some litigation, hence, the respondent-accused refused to purchase the plot in question, but the applicant-appellant did not agree with the respondent-accused and adamantly presented the cheque in question for encashment, however, it was orally directed by the respondent-accused that the abovesaid cheque be not presented in the Bank. It has been further held

by the trial Court that applicant-appellant has come to the Court with a concocted story and he has no financial capacity to advance such a huge amount within the span of one year i.e. 09.01.2011 to 13.03.2012. It has also been held by the trial Court that the applicant-appellant has not produced any documentary evidence for showing the source of such a huge amount which was alleged to be paid by the complainant to the accused which itself made the story of the applicant-appellant inadmissible. This Court is also in conformity with the findings recorded by the learned trial Court because the applicant-appellant has certainly failed to prove the source of such a huge amount of Rs.35,00,000/-. As far as the sale deeds Ex.C14 to Ex.C16 are concerned, they do not belong to the same period during which the amount in question is alleged to have been lent to the respondent-accused. Hence, the said sale deeds fail to corroborate the stand of the applicant-appellant.

It is a settled law as held in **C. Antony v. K.G. Raghavan Nair, 2002(4) RCR(Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his 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.

On perusal of the judgment passed by the trial Court dated 24.04.2018, this Court is of the considered view that the said judgment is well reasoned and is based upon proper and concrete appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or warranting any interference by this Court. The accused-respondent has been duly able to

rebut the presumption under Section 139 of the N.I. Act, 1881 and as such,  
he has rightly been acquitted of the notice of accusation served upon him.

Accordingly, the leave to appeal stands declined.

Dismissed.

25.05.2023  
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(SANDEEP MOUDGIL)  
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No