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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-98-2024

Date of Decision: 04.03.2024

Rajbir

...Appellant

Versus

M/S Akash Kumar Parkash Kumar and another

....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhimanyu Singh, Advocate
for the appellant.

SANDEEP MOUDGIL, J.(oral)

Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 13.12.2023, passed by the Sub Divisional Judicial Magistrate, loharu, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under section 138 of the Negotiable Instruments Act (for short ' the Act').

Factual Matrix of the case leading to the filing of present petition unfolds as that the accused in order to discharge his legal liability towards the complainant issued a cheque bearing no. 370162 dated 05.11.2018 of Rs. 3,00,000/- drawn on Punjab National Bank, Branch Office Loharu. And on presentation of said cheque to the bank the same got dishonoured vide memo dated 15.11.2018 with the remarks “funds insufficient”. Thereafter statutory legal notice was

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issued on 21.11.2018 to the accused and he failed to respond to the said legal notice.

Learned counsel for appellant contended that the learned trial Court has erred in law while dismissing the complaint without appreciating the fact that respondent-accused had duly admitted the cheque bearing no.370162 dated 15.11.2018 and also, he does not dispute his signatures on the cheque. He further contends that no defence evidence has been led by the accused to prove that the alleged cheque was given as a security cheque.

I have heard learned counsel for the appellant and gone through the record.

The respondent in his statement under section 313 Cr.P.C 1973 denied the incriminating materials put by the appellant, however admitted the fact that the cheque in question bears his signature. He further submits that he does not owe any legal liability towards complainant and stated that appellant witness has deposed falsely. The respondent has taken a defence that the cheque in question was given as security cheque which has been misused. Moreover, findings returned by the trial court specifically mentions that the cheque has been altered with insofar as the name of the complainant along with

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one deshram has been mentioned and cheque was never issued in the name of deshram who is the father of the complainant which raises doubt in the story of the prosecution. The complainant has failed to prove on record the outstanding due against the accused as on the date of issuance of cheque in question giving the benefit of doubt to the accused. Unless the initial burden is discharged by the complainant the presumption available under section 139 of N.I Act.

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 13.12.2023, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond

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reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

Accordingly, the leave to appeal stands declined.

Dismissed.

04.03.2024
Sham

(Sandeep Moudgil)
Judge

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No