

2024.PHHC:166307



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222

CRM-A-1674-MA-2018 (O&M)
DATE OF DECISION: 27.11.2024

GURSEWAK SINGH

.....APPELLANT/APPLICANT

Versus

STATE OF PUNJAB AND ANR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S Sekhon, Advocate
for the applicant/appellant.

Mr. J.S Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J.

CRM-29044-2018

1. Prayer in this application is for condonation of delay of 55 days in filing the accompanying appeal.
2. In view of the assertions made in the application, the same is allowed subject to all just exceptions. Delay of 55 days in filing the accompanying appeal is condoned.
3. The application stands disposed of.

CRM-A-1674-MA-2018

1. By filing the present appeal, under Section 378(4) Cr.P.C. the appellant has assailed the judgment dated 16.01.2018, passed by the Judicial Magistrate Ist Class, Ferozpur 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').

2. 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 gave the benefit of acquittal to the respondent-accused on the ground that there are certain discrepancies in the version of the complainant, which culminated into being the defence of accused probable and trustworthy. Such an erroneous finding deserves to be set aside as the trial Court has utterly failed to appreciate the well proven oral as well documentary evidence of the complainant. The presumption under Section 139 of the N.I. At, 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 in question. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 16.01.2018 is liable to be set aside.

3. Heard.

4. I have perused the impugned judgment carefully and have also meticulously gone into the findings recorded by the trial Court. Upon perusal of the same, I do not find any perversity or illegality therein. As the accused

under Section 313 Cr.P.C has denied the incriminating material against him and has stated that the complainant has misused his cheques given by him as a the complainant was a commission agent and in normal course of dealing has given blank cheque to the complainant. Moreover the complainant do not know on what date he had lended the money to the accused-respondent and even the complainant has failed to prove the financial capacity to lend such a huge amount. Hence, it can be said that the applicant-appellant has grossly failed to prove that the cheque in question was issued qua discharge of any legally enforceable debt and consequently, he fails to prove the necessary ingredients to bring home guilt of accused under Section 138 of the N.I. Act, 1881. The respondent has successfully rebutted the presumption under Section 139 of the N.I. Act, 1881 and as such the judgment of acquittal has been rightly passed by the learned Court below.

5. 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.

6. On perusal of the judgment passed by the trial Court dated 16.01.2018, this Court is of the considered view that the said judgment is well reasoned and is based upon proper 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 requiring 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.

- 7. Accordingly, the leave to appeal stands declined.
- 8. Dismissed.

27.11.2024
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(SANDEEP MOUDGIL)
JUDGE

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