

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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DATE OF DECISION: 11.09.2024

CRM-A-2059-MA-2018

SALWINDER SINGH ...APPLICANT/APELLANT

Versus

STATE OF PUNJAB AND ANR. ... RESPONDENTS

CRM-A-139-2019

SALWINDER SINGH ...APPLICANT/APELLANT

Versus

STATE OF PUNJAB AND ANR. ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Ramandeep Kaur, Advocate for
Mr. Rajesh Kapila, Advocate for the appellant(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Vide this common order, above said two appeal shall be disposed as common question of facts and law are involved therein.
2. For the sake of convenience, the facts are taken from CRM-A-139-2019.
3. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 18.09.2017 passed by the Judicial Magistrate 1st Class, Gurdaspur dismissing the complaint and acquitting the private respondent No.2



(hereinafter referred to as 'the respondent) therein of the charges framed against him under Section 138 of the Negotiable Instruments Act (for short ' the Act').

4. Factual Matrix of the case leading to the filing of present petition unfolds as that the respondent had taken Rs.4,20,000/- from appellant as friendly loan to meet his domestic needs and in order to discharge the above mentioned liability, respondent issued a cheque bearing no.143240252 on 11.10.2014 for Rs.4,20,000/-, payable at HDFC Bank Ltd., Dhariwal in the name of appellant for the discharge of his liability under the signatures and accused also assured the complainant that the said cheque will be encashed, when it will be presented in the bank. It is further stated that the appellant deposited the above mentioned cheque for encashment through Punjab National Bank, but the same was dishonoured being "Insufficient funds", vide memo dated 14.10.2014 of HDFC Bank Ltd., Dhariwal. Thereafter, complainant issued a legal notice dated 20.10.2014 to the respondent for payment of the amount of cheque within a period of 15 days from the receipt of the notice, but accused refused to take register notice. Thereafter, the appellant filed a complaint before the JMIC, Gurdaspur vide NACT No.1574 dated 28.11.2014 but without appreciating the facts of the case, the Trial Court dismissed the complaint. Hence, the present appeal has been filed by the appellant.

5. Learned counsel for the appellant contends 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.

6. The contention of the counsel for the appellant is that the claim of the appellant is disbelieved by the Trial Court only on the ground that the appellant mentioned wrong cheque number in the legal notice Ex.CI issued to the respondent whereas the same get corrected by filing an application and inadvertently the wrong cheque number was written. Counsel for the appellant further asserts that the appellant has proved the factum of issuing the cheque by the respondent for discharge of his legally recoverable debt as well as the dishonour of the cheque but the Trial Court has acquitted the respondent. Furthermore, the respondent has also never examined any handwriting expert to support his case.

7. 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 in spite 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 18.09.2017 is liable to be set aside.



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

9. From perusal of the impugned judgment, it is apparent that complainant himself is drawing pension of Rs. 14000/- per month and his wife is dependent upon him and with this limited income, the appellant could not have advanced such a huge amount of Rs. 4,20,000/- to the respondent and that too without charging any interest and further, the complaint of the complainant is not maintainable as the respondent was issued legal notice dated 20.10.2014 i.e. Ex. C1 in which it was specifically stated that the respondent issued cheque bearing No. 143240252 dated 11.10.2014 in favour of the appellant whereas cheque on the basis of which present complaint has been filed bears No. 000001 and thus, the respondent was never with correct legal notice and admittedly no fresh notice was served upon the respondent, therefore, the appellant has not fulfilled the necessary compliance as required under Section 138 of NI Act thus, this court finds no reason to disbelieve the conclusion made by the Trial Court in the impugned order.

10. 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.

11. On perusal of the judgment passed by the trial Court dated 18.09.2017, 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 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.

12. Accordingly, the leave to appeals stand declined.

13. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

11.09.2024
anuradha

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