



228 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2016-MA-2016 (O&M)
DATE OF DECISION:-24.04.2024

Sandeep Kumar

...Applicant.

Vs.

Anant Ram

...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. B.S. Mamli, Advocate for
Mr. R.S. Mamli, Advocate,
for the applicant.

HARKESH MANUJA, J.

1. Present application has been filed under Section 378 (4) Cr.P.C., for grant of leave to appeal against judgment of acquittal dated 20.09.2016 passed by the Judicial Magistrate Ist Class, Kurukshetra, whereby respondent has been acquitted of the charges under Section 138 of the Negotiable Instruments Act, 1881 (for short, "NI Act").

2. Facts leading to the present case are that on account of dishonour of cheque bearing No.161194 dated 30.09.2009, amounting to Rs.3,00,000/-, respondent was arrayed as an accused in a complaint bearing NACT No.18114-2013, titled as "*Sandeep Kumar vs. Anant Ram*" filed under Sections 138 and 142 of NI Act.

3. In order to prove his case, complainant entered into the witness box as CW-1 and examined Ramji Lal, Officer Scale-I, PNB Pipli as CW-2 and Hawa Singh Ranga, Special Assistant Officer, SBI (Retired) as CW-3

and produced documents Ex.C1 to Ex.C8 as well as some other documents. Thereafter, statement of respondent-accused was recorded under Section 313 Cr.P.C., wherein, he refuted all the allegations and pleaded innocence. Respondent was called upon to lead his evidence in defence. In his defence, respondent himself appeared as DW-1 and examined Mahinder Pal as DW-2 and Hans Raj, Post Master, Post Office Ajrana Kalan as DW3 and produced documents Ex.D1 to Ex. D6 and closed his evidence.

4. On appreciation of evidence and after hearing arguments advanced by learned counsel for both the parties, the Trial Court acquitted the respondent vide its judgment dated 20.09.2016. The present appeal along with application for grant of leave to appeal against aforesaid judgment has been filed by the applicant, raising various grounds.

5. Learned counsel for the applicant submits that the trial Court totally ignored the fact that the respondent has not disputed the issuance of cheque amounting to Rs.3,00,000/- which was given to him for opening of Computer Centre. He also submits that there was no over-writing or cutting in the name, amount and date as the same was duly filled up by the respondent in his own hand writing and thus, the Trial Court wrongly acquitted the respondent.

6. Having heard the arguments advanced by learned counsel for the applicant besides having gone through the judgment passed by the Trial Court and other documents available on the file, I am unable to find any substance in the submissions made on behalf of the applicant.

7. As per the version of applicant-complainant, he advanced loan of Rs.3 lakh to the respondent for opening a computer centre at Ismailabad for his son, whereas no such document was scribed relating to advancement of

loan. Moreover, in his cross-examination, he deposed that he had given a sum of Rs.3 lakhs to respondent on 02.05.2009, whereas, in the complaint, he had stated that the loan was advanced on 15.03.2009 by withdrawing the amount from the bank or post office but no such record has been produced by him from where he had withdrawn the amount.

As regards the contention of the applicant that there was no overwriting or cutting in the name, amount and date in the cheque in question as the same was duly filled up by the respondent in his own hand writing, is concerned, complainant in his cross-examination deposed that there was cutting where the account number of the accused-respondent was written, as such, the trial Court had rightly observed that while making the cutting on account number mentioned in the cheque in question, the signatures of respondent-accused were not obtained and it is common practice that when any cutting/overwriting is made in the cheque, that cutting/overwriting is most of the time, countersigned by the person who made such cutting or overwriting so as to avoid any dispute in future but the absence of same in present case remained without any proper and plausible explanation. Further, in order to prove bank memo, applicant-complainant examined Hawa Singh Ranga, Special Assistant Officer, SBI (CW-3), who during cross-examination deposed that column of account number in the cheque was blank and account No.30272 and 30277219569 were mentioned and both the said numbers were having cuttings. In addition, the complainant in his cross-examination deposed that there was loss in the firm but still he advanced a sum of Rs.3 lakhs to the respondent, that too, without any agreement or receipt, beside it, even no witness had been examined by him, who witnessed the advancement of loan to the respondent.

8. In “**Arulvelu & another v. State represented by the Public Prosecutor & another**”, reported as 2009(4) RCR (Criminal) 638, the Hon’ble Supreme Court has laid down the following guidelines for the appellate court while dealing with cases where trial court acquitted the accused:-

"1. The accused is presumed to be innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanor of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/ appellate courts must rule in favour of the accused.

6. An order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing out the finger towards the accused.

7. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

9. In the light of aforesaid guidelines, having examined the judgment of the Trial Court and reasoning recorded therein regarding acquittal of the respondent, in the facts and circumstances of the present case based on the evidence available on record, in the humble opinion of this Court, the Trial Court, after properly appreciating the evidence, rightly came to the

conclusion that the complainant failed to prove his case against the respondent beyond all reasonable doubts. The view taken by the Trial Court is not in any way unreasonable, perverse or impossible, rather, in the given facts and in view of the evidence led by both the parties, no second view is possible and plausible. The Trial Court has in fact rightly held that cheque in question was not issued by the accused-respondent in discharge of any legally enforceable debt.

10. Accordingly, there being no illegality or perversity in the reasoning recorded by the trial Court, I do not find any ground to grant leave to appeal against its judgment dated 20.09.2016. Hence, the present application as well as the appeal stand dismissed.

11. All pending application(s), if any, stand disposed of.

24.04.2024

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No