

2024:PHHC:154734



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

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**CRM A-1849-MA of 2017
Date of Decision: 25.11.2024**

Sahil Sindher ...Applicant
Versus
Prem Wati Yadav ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. B.S. Khehar, Advocate
for the applicant.

Mr. Rajesh Lamba, Advocate
for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal against the impugned judgment dated 28.03.2017 passed by the Judicial Magistrate 1st Class, Gurugram, whereby, the respondent was ordered to be acquitted of the notice of accusation.
2. The brief facts of the complaint are that the applicant was having good friendly relations with the respondent and her husband and on the basis of their friendly relations respondent alongwith her husband, approached to applicant for friendly loan to the sum of Rs.3,50,000/- in the month of January, 2015 at applicant's office at village Sadhrana, District Gurgaon as the respondent and her husband

were in desperate need of the money for their business. The respondent and her husband had further assured to the applicant that they would refund the friendly loan amount within a period of four months promptly without any further delay and default on their part. Thereafter, the applicant believing upon respondent and her husband's specious warranty and assurances, paid a sum of Rs.3,50,000/- in cash to them. Even after the passage of four months when the respondent and her husband did not turn up qua the repayment of the friendly loan, then the complainant got perturbed and thereafter tried to contact respondent and her husband, then, on meeting the respondent and her husband, they assured the applicant that the payment would be made very soon. Thereafter, the respondent and her husband in discharge of their legal liability to repay the friendly loan amount, had issued two cheques bearing No. 000015 & 000026 dated 09.02.2015 & 02.04.2015 of Rs. 40,000/- and 3,00,000/- drawn on HDFC Bank, Ltd. Chandu Budhera Chowk, VPO Budhera, Gurgaon. The cheque bearing No.000015 dated 09.02.2015 of Rs.40,000/- was presented by applicant with his banker but the said cheque was returned unpaid for the reason "Instrument Outdated". Another cheque bearing No.000026 dated 02.04.2015 of Rs.3,00,000/- was got dishonored upon presentation for reason "Funds Insufficient". When the applicant approached the respondent and her husband, then they failed to honour their liability. The applicant also issued a legal notice dated 06.06.2015 by registered AD through his counsel. Thereafter,

despite being served with legal notice the accused did not make the payment within mandatory period of 15 days of the cheque amount. Hence, the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as '**the Act**'))

3. After the preliminary evidence, the respondent was summoned to face trial under Section 138 of the Act and the complaint against the husband of the petitioner was ordered to be dismissed.

4. After the summoning, the respondent appeared before the trial Court and was served with notice of accusation under Section 138 of the Act.

5. In order to prove his complaint, applicant himself entered into the witness box as CWI and tendered his duly sworn affidavit (Ex.CWI/A) in evidence. In his documentary evidence, applicant has tendered, original cheque Ex.CW1/B & Ex.CW1/C, return memos Ex.CWI/D & Ex.CW1/E, legal notice Ex.CW1/F, postal receipts Ex.CWI/G to Ex.CW1/J. CW2 Manish Kumar Branch Manager, HDFC Bank brought the summoned record the account of respondent Prem Wati wife of Sher Singh. He further deposed that cheque Ex.CWI/B & Ex.CWI/C were issued by their bank from account No.50100053002045 of the respondent. Cheque Ex.CW1/B was dishonored due to "Funds Insufficient" the details of which were

mentioned at point 'A' in bank statement. The detail of Cheque Ex.CWI/C was at point 'B'.

6. Statement of respondent under section 313 Cr.P.C had been recorded in which she pleaded to be innocent and denied all the allegations levelled against her. She further stated that she did not take any loan. It was false and fabricated complaint. The security cheque had been misused which were taken at the time of bricks dealing. She denied receiving of any legal notice. The respondent preferred to lead evidence in defence. In defence respondent tendered document Ex.D1 & Ex.D2 and thereafter closed the defence evidence.

7. Learned counsel for the applicant submitted that the applicant was having good friendly relations with the respondent and her husband and they had approached him for friendly loan to the tune of Rs. 3.50 lacs in the month of January 2015. On their appearance, the loan was extended to them and in discharge of their liability they had issued two cheques, however, the cheques were dishonoured on presentation. He further contended that even the trial Court observed that the execution of the cheques Ex. CW1/B and Ex. Ex.CW1/C had been established on record. Moreover, the respondent had not denied her signatures on the cheque. Since, the valid execution of the signatures were admitted, the mandatory presumption of law was there in favour of the applicant and the burden had shifted on the respondent to disprove the allegations. Even, the respondent had

taken a stand that she did not take any payment from the applicant, rather the cheques in dispute were issued as security cheques at the time of dealing of bricks. However, the respondent did not examine any witness in advance and she had virtually admitted the issuance of the cheques.

8. On the other hand, learned counsel for the respondent submitted that the applicant had failed to give any detail when the loan was given to the respondent. Even, he could not tell anything about the business and his income. No ITR was placed on record and even the applicant had no financial capacity to make the payment to the respondent. Still further, the applicant had failed to prove any valid liability on the part of the respondent and the impugned judgment is legally unsustainable.

9. I have considered the rival submissions made by learned counsel for the parties and perused the trial Court record carefully.

10. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of **Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288)** as follows:-

“14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an

important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed in Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974.

The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence

adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

11. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3)**

RCR (Criminal) 62: 1996 CrilJ 2867, this Court observed as under:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

12. In the present case, the applicant had appeared as a witness in the witness box and his testimony has been discussed by the trial Court in detail. The respondent had taken a plea that the cheque was given by her as security for the brick dealing. From a perusal of the testimony of the applicant, it is evident that he had admitted the dealing of bricks with the husband of the respondent. However, there was no evidence to show that there were friendly

relations between the applicant and the respondent. The applicant failed to disclose the name of the father of the respondent and he admitted that he had never gone inside the house of the respondent. He had no knowledge about the children, business, source of income of the respondent. Even, he stated that he was filing the income tax returns, whereas, he did not bring on record his ITR. He further stated that he had given the loan in the month of January 2015 but he failed to disclose the exact date and time, when the loan was advanced. He stated that the loan was given for a period of four months and the disputed cheques were given by the respondent after four months. However, he could not tell the date and time, when the cheques were given in April last, whereas, from a perusal of the cheques, it is evident that the cheque No. 000015 bears the date of 09.02.2015. Apart from that, the signatures of the respondent on the cheque are in Hindi and with a different pen and the other particulars were in English and with a different pen. All these facts when taken cumulatively raised a big question mark on the veracity of the statement made by the applicant himself. Apart from that, the applicant could neither disclose the source from which the money was arranged nor the mode of payment could be disclosed by him. Even, the parties were having friendly relations and it is improbable that the loan was given by the applicant to the respondent without executing even a simple receipt. Apart from that, the applicant also failed to examine any witness to show the payment to the respondent. Apart

from that, the defence had raised a plea that the applicant was neither capable nor in possession of sufficient funds to advance the loan.

13. At this stage, no doubt, the complainant is not required to prove his financial capacity in the cases under Section 138 of the Act, however, when the money is lent in cash and the accused had issued the cheque in discharge of his legal liability and if the accused challenges the financial capacity of the complainant to advance the money, then despite presumption under Section 139 of the Act, the complainant has a legal obligation to prove his financial capacity or source of income in the beginning and the obligation only arises, when his capacity or capability to advance the money is challenged by the accused.

14. In the present case also, the transaction of loan is not evidenced by the documentary evidence or reliable evidence. Thus, I find that the trial Court had rightly held that the respondent had been able to rebut the presumption of law, which had arisen in favour of the applicant.

15. In view of the above discussion, I find no infirmity or illegality in the impugned judgment passed by the trial Court. As a consequence, the present application for special leave to appeal is meritless and is liable to be declined.

16. Dismissed.

17. Pending application(s), if any, also stand disposed off accordingly.

25.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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