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

214 **CRM-A-1942-MA-2017**
Date of Decision 26.04.2024

Bahadur Singh ...Applicant

Versus

State of Punjab and another ... Respondents

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

Present : Mr. Aditya Dassaur, Advocate, for the applicant.

Mr. Ravinder Singh, AAG, Punjab.

Mr. Ashish Nagar, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J.

1. The petitioner/complainant has preferred the instant application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the impugned judgment dated 19.07.2017 passed by the learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar, whereby, he had reversed the impugned judgment and order passed by SDJM, Balachaur and had acquitted the respondent No. 2 of the notice of accusation under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**').

2. In the present case, the complaint under Section 138 of the Act was filed by the present petitioner against the respondent No. 2 by alleging that she had borrowed a sum of Rs. 4 lacs for domestic needs from the present petitioner and in discharge of her legal

liability, the respondent No. 2 had issued a cheque bearing No. 011369 dated 07.10.2013 for a sum of Rs. 4,00,000/- drawn on Central Bank of India, Branch Office Balachaur, Tehsil Balachaur and an assurance was made that the cheque would be honoured on presentation. However, when presented, the cheque was dishonoured by the bank with the remarks "funds insufficient". Despite the receipt of legal notice, which was got issued by the petitioner through her counsel, the respondent No. 2 failed to make the payment within statutory time period and the petitioner filed a complaint on 11.12.2013.

3. During the course of preliminary evidence, the petitioner himself stepped in the witness box as CW1 and tendered certain documents as exhibits. Thereafter, the preliminary evidence was closed. The notice under Section 138 of the Act was given to the accused, to which, respondent No.2 pleaded not guilty and claimed trial. Again, the petitioner appeared as CW1 and learned counsel closed the prosecution evidence.

4. The statement of respondent No. 2 under Section 313 Cr.P.C. was recorded and the entire incriminating evidence was put to her, she was denying. She stated that she had never issued any cheque in favour of the present petitioner nor he was known to her. The cheque in question had been forged by Bimla Devi wife of Sat Pal, in connivance with her daughter Jiwan Jyoti. In fact, Bimla Devi had taken the cheque from her on the request that she had to take loan

from the bank and blank cheque of the respondent No. 2 was required as security of the said amount. She stated that she had not filled any column of the cheque in dispute and Bahadur Singh petitioner was not in a position to avail such an huge amount and the cheque had been forged and fabricated.

5. After the conclusion of the trial vide the judgment and order dated 01.12.2015 passed by the Sub-Divisional Judicial Magistrate, Balachaur (S.B.S. Nagar), the respondent No. 2 was convicted by the trial Court and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 10,000/- alongwith default stipulation under Section 138 of the Act. The respondent No. 2 filed an appeal and also moved an application under Section 391 Cr.P.C. read with Section 311 Cr.P.C. for leading additional evidence, which were allowed and she examined Subhash Chuhan, Bank Manager, HDFC Bank, Balachaur Branch as DW1 and also tendered into evidence the statement of accounts as Ex.D-1 and Ex.D-2.

6. Learned counsel for the applicant submits that the trial Court had correctly convicted the respondent No. 2 and while reversing the judgment passed by the trial Court, the appellate Court completely overlooked the reasons recorded by the trial Court. Learned counsel further contends that there was no evidence to show that the body of the cheque was forged by the present petitioner. He further contends that the signatures on the cheque were not disputed by respondent No. 2 and no defence evidence was led by the

respondent No. 2 to show that the cheque was given by her to Bimla Devi as a security cheque, to obtain loan from the bank and the entire story is cooked up. Learned counsel further submits that there was no evidence to show that Bimla Devi had taken loan from some bank, as alleged and the respondent No. 2 had issued a cheque in dispute, with regard to the said loan. Even, the appellate Court had clearly failed to appreciate that the presumption under Section 118/138 of the Act was already in favour of the petitioner in the present case and the respondent No. 2 was liable to be convicted by the Court.

7. On the other hand, learned counsel appearing on behalf of respondent No. 2 submits that the impugned judgment does not suffer from any illegality and has been passed by the appellate Court after taking into consideration the arguments by both the sides. Even, the cross-examination of CW1 clearly exposed the falsehood of the prosecution case. Even, from the cross-examination of CW1, Bahadur Singh, it was clear that the cheque had been forged and fabricated by him, just to involve the respondent No.2 in a criminal case.

8. I have heard the learned counsel for the parties and perused the record.

9. In the present case, the petitioner had alleged that respondent No. 2 had borrowed a sum of Rs. 4 lacs from him for her domestic needs and the cheque was issued in discharge of her legal liability. However, the appellate Court correctly held that from the submissions of CW1 Bahadur Singh, the innocence of the respondent

No. 2 was proved. He had clearly stated that when he received the cheque, the amount was already mentioned in the duly signed cheque and the date was not mentioned on the cheque. However, he stated that he had given his cheque to his counsel, who wrote his name and other details on the cheque. He also stated that the cheque was written by his counsel at the time of filing of the present case in his presence. Apart from that, it was apparent that the cheque, when it was handed over by respondent No. 2, it was totally blank and the petitioner had forged the cheque in collusion with Veena Rani and her associates. He further exposed the falsehood of the prosecution case and proved the false implication of respondent No. 2 by stating that he had met Veena Rani, respondent No. 2 in the house of Bimla Devi and amount in cheque was written by Bimla Devi. He stated that he had approached to his counsel vide Bimla Devi and names and details of Veena Rani were disclosed to his counsel by Bimla Devi. This clearly shows that the petitioner had never met respondent No. 2 earlier and he would not have advanced any loan to her.

10. Still further, while dismissing the appeal, the appellate Court had made the following observations and this Court finds no reasons to deviate from the same:-

> *"15. It was specifically argued by Ld. Counsel for the accused that the complainant had failed to prove his financial capacity to lend such a huge amount of money to her, but Ld. Trial Court has not dealt with this important aspect of the case. The complainant when*

cross- examined as CW-1 has stated that he met the accused Veena Rani for the first time in the mid of September, 2013 and he was not on visiting terms with her. He has stated that he was known to Bimla Devi but she did not introduce them to the complainant. In such circumstances, it is quite surprising and very difficult to believe that the complainant would have advanced 4 lacs to the accused, who was a stranger to him. He stated that he gave money to the accused in presence of Bimla Devi and her daughter. Bimla Devi and her daughter would have been the best witnesses to corroborate the version of complainant. But their non-examination has raised serious doubt regarding the story of complainant.

16 Furthermore, the complainant CW-1 has stated that no separate writing was prepared with regard to the payment of ₹ 4 lacs to Veena Rani. He has also stated that no interest was charged by him on the amount given to her. This statement of the complainant is not believable because in normal course of human conduct no one would advance such a huge amount to a stranger without effecting any written instrument or receipt and that too without any interest thereon.

CW-1 has stated that he withdrew part of the amount from his bank account maintained with HDFC bank at Balachaur and the remaining amount was lying with him as he had sold 300 poplar trees to R.K. Firm in Yamunanagar. This story put forth by the complainant was not believable because he has not placed on record any documentary proof in support of his statement that he had withdrawn money from the bank. The complainant has even failed to inform his account number and the *amount of money withdrawn by him. On the other hand, the accused/ appellant has examined Bank Manager of HDFC bank as DW-1, who deposed that complainant Bahadur Singh maintained two accounts bearing numbers 18338040000460 and 18331690000511, with his bank and his ID number was 47861805. He proved the statements of both the accounts as Ex-D-1 and Ex.D-2 and as per the records, Bahadur Singh did not withdraw any amount from his accounts in the month of September 2013. The story regarding sale of poplar trees is also unbelievable because CW-1 has stated that he had sold the crop of poplar wees in the month of December 2012 and it took 5 years to harvest the crop of poplar trees. Now if the complainant had sold his crop in the year December 2012, the next crop would have been mature for harvest in the year 2017. Therefore it is not believable that the complainant harvested the crop immediately after one year by the end 2013. Moreover, the complainant has not placed on record any sale documents or J Forms to prove the sale of poplar trees to R.K. Firm in Yamunanagar. He could not even inform the complete name and address of R.K. Firm or the sale price of each plant, allegedly sold by him. Therefore, in the absence of any evidence this court is convinced that the complainant Bahadur Singh did not have the requisite financial capacity to pay 4 lacs to Veena Rani. In the case of* ***Krishna Janardhan Bhat V. Dattatraya G. Hegde 2008(1) RCR (Criminal) 695,*** *Hon'ble Supreme Court has set-aside the conviction on the ground that complainant could not prove that he had₹ 1,50,000/- to advance payment to the accused. Reliance can also be* *placed on **John K.Abraham Vs. Simon C. Abraham and another 2014(1) RCR (Criminal) 267** wherein it has been held that heavy burden lies on the complainant to show that he had required funds for giving money to the accused. These are the suspicious circumstances which strike at the root of the case of complainant. The complainant has not approached this court with clean hands and his conduct is not that of a prudent man. In a latest pronouncement by our Hon'ble High Court in case of **Shiv Dial Singh Vs. Jitender Kumar and another 2015(4) RCR (Criminal) 939,** the judgment of conviction has been set-aside and the accused has been acquitted on the ground that the complainant could not show the source of the amount of 2.5 lacs advanced to the accused. In the instant case, Ld. Trial Court proceeded with the case and has convicted the accused in a mechanical fashion without applying mind on various, parameters as discussed in the judgment of **Shiv Dial Singh (Supra)** which are required to be considered before arriving at a judicious conclusion."*

11. From the above referred reasoning recorded by the appellate Court, it is apparent that a conspiracy was hatched by Bimla Devi in collusion with the present petitioner to involve the respondent No. 2 in a false criminal case under Section 138 of the Act. However, the cross-examination of petitioner No. 1, when he appeared as CW1 exposed the said conspiracy and it was apparent that the trial Court had convicted the respondent No. 2 mechanically and the impugned judgment dated 19.07.2017 passed by Additional Sessions Judge is based on correct appreciation of law and facts. Even otherwise, I have

gone through the judgment passed by the appellate Court and find no reasons to interfere with the same.

> *8. It has been held by the Hon'ble Supreme Court in the matter of* **<u>"Bhaskarrao and others Vs. State of Maharashtra", 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228</u>** *as follows:-*
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> *"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. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -***
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> *"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 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 reappreciation, 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 reappreciation 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 characterized 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."

*15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867,** this Court observed:*

"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."

9. Still further in ***Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another], decided on 11.07.2022,*** *Hon'ble the Supreme Court has held as under:-*

"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in ***Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)*** *as follows:*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters".

12. The impugned judgment judgment dated 19.07.2017 passed by the learned Additional Sessions Judge, Shaheed Bhagat

Singh Nagar is affirmed and upheld and the application for leave to appeal is dismissed.

13. All pending applications, if any, are disposed off, accordingly.

26.04.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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