

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(222)

CRM-A-983-MA-2014

Date of Decision:- 05.03.2024

Bhupender Singh

.....Appellant

Versus

Rajesh @ Premveer

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sandeep Goyat, Advocate for the appellant.

Mr. Vivek Singla, Advocate for the respondent.

KULDEEP TIWARI, J. (Oral)

1 The instant appeal has been filed against the verdict of acquittal dated 12.02.2014 vide which respondent has been acquitted from the charges framed under Section 138 of Negotiable Instruments Act.

2 The instant complaint against respondent No.2, was filed by the applicant-appellant with the allegations that accused-respondent has borrowed an amount of Rs.8,00,000/-, from the complainant on dated 10.12.2010, for his personal necessity, and the complainant had given the amount to the accused without any suspicion because the accused was of a resident of village of complainant i.e. Bado Ragdan. Accused has assured that he will repay the said loan amount in the month of May, 2011 and in order to discharge his monetary liability in the month of May, 2011 i.e. on 04.05.2011, he issued a cheque bearing No.068311 for an amount of Rs.8,00,000/-, drawn on UTI Bank Limited (Now Axis Bank),

Hisar, in favour of the complainant. However, on presentation of cheque, it was dishonoured with a remark 'fund insufficient' vide memo dated 01.06.2011. The drawer failed to make the payment despite receipt of statutory notice within 15 days which was served on dated 27.06.2011. The accused/respondent was summoned to face trial under Section 138 of the Negotiable Instruments Act. On the basis of above complaint, vide order dated 23.08.2011, in order to prove the allegations, the complainant examined himself as PW-1, and tendered into various documents and thereupon, closed the evidence. The respondent did not led any evidence, however, his counsel tendered documents Ex.D-1 to Ex.D-5. After appreciating the evidence so adduced by the complainant and documentary evidence as placed on record by the respondent-accused, the learned trial Court concerned recorded the verdict of acquittal, which is now under challenge through the instant appeal.

3. Submissions made by learned counsel for the applicant/appellant

Learned counsel for the applicant/appellant submits that the respondent accused has not disputed the fact of issuance of cheque in dispute, and it is admitted fact that cheque so issued was dishonoured due to 'insufficient fund'. It is also not under dispute that the respondent-accused, was the signatory of the said cheque, therefore, a statutory presumptions as per Section 138 of the NI Act, arose in favour of the complainant, and the accused-respondent failed to rebut the statutory presumptions arose against him, and despite that the learned trial Court has illegally recorded the verdict of acquittal. Therefore, the verdict (supra) requires interference. He also submits that the defence has not

produced any evidence to rebut statutory presumptions which arose against him, therefore, the learned trial Court concerned ought to have on the strength of statutory presumptions convict the respondent-accused.

4. The submissions by learned counsel for the respondent

The learned counsel for the respondent-accused has opposed the submissions made by learned counsel for the applicant/appellant, on the ground that only witness i.e. complainant stepped into the witness box as PW-1 and his credibility doubted by the learned trial Court, and except the complainant, no other witness was examined to prove the allegations as levelled against the petitioner, by the complainant. He further submits that the learned trial Court concerned, has as raised suspicions about lending any amount of Rs.8,00,000/- without any documents to the accused/respondent and in absence of any credible evidence on record, the learned trial Court has rightly recorded the verdict of acquittal. He also submits that even if both the views are considered, the view which was in favour of accused should have been taken, as after earning the acquittal, the equity culled in his favour.

5 Ordinarily, the order of acquittal will not be interfered with,lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in ***Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470*** as well as held by this Court in CRM-A-2456-MA-2018 titled **“State of Haryana Vs. Shyam Sunder”** and in CRM-A-2941-2019 titled **“State of Haryana Vs. Vishal”**.

6 On the touchstone of the above law laid down by the Hon'ble Supreme Court as well as this Court also, this Court has examined the judgments of acquittal, and do not find any perversity or illegality in the same.

7 For the reasons discussed hereinabove, first of all there is no evidence which could establish that a loan of Rs.8,00,000/- has been advanced to respondent-accused. The contention of the complainant was found to be reliable by the learned trial Court concerned, on the fact that respondent-accused does not belong to his village, and therefore, there is no reason for him to lend such a big amount without any writing or documents. Further, the brother of the complainant i.e. Devender Singh was not examined by the complainant, for the reason best known to him, to support his contention regarding advancement of loan, as he categorically alleged that at the time of advancement of loan, his brother was one of the witness. It has also come on record that on the same date, one more complaint was filed, that too by uncle (Fufa) of the complainant against the present accused respondent on the same set of allegations rather learned trial Court concerned after examining both the complaints, which was placed on record by the accused/respondent in his defence, concluded that both the complaints are infact verbatim the same. It is not disputed by both the counsels, that the second complaint, which was filed by the relative (Fufa) of the present complainant, is a factual thing. The relevant extract of the judgment is read as under:

“15. Now comes the very important factum which has been revealed from the copy of complaint Ex.D.1. The accused

has placed on record the copy of complaint case No.808/2011 which has been instituted on 1.8.2011. The copy of the complaint Ex.D.1 perused. The number of the present complaint is 809 and it is dated 1.8.2011. Meaning thereby, the complaint no.808 of 2011, and the present complaint were filed on the same date simultaneously. Not only this, the perusal of para no.1 of the complaint No.808 (Ex.D.1) and the para no.1 of the present complaint shows that these paras are exactly same except qua the amount of the cheque and the date. Not only this, both of these complaints have been filed through one advocate that is Sh. Aman Dhillon. Meaning thereby, both of these complaints have been prepared at the same time. However, the complainant has made very strange deposition in the cross-examination on the page no.3, the complainant has deposed that he does not know whether the date on which his uncle (fufa) had met him (the complainant) in the office of advocate he (uncle of the complainant) had any cheque drawn by the accused or not and the complainant has further deposed that also he (complainant) does not know whether any notice was got issued by the uncle of the complainant through Shri Aman Dhillon advocate. The accused has also placed on record the copy of the notice issued by Mewa Singh through his counsel as Ex.D.3. Notice perused. The perusal of the notice shows that it is of the same date that is 27.6.2011 on which the notice Ex.P.3 in the present case had been issued to the accused. So, it is improbable that the complainant did not know anything about the case of his uncle (Fufa) which has been filed through the same advocate on the same date in which not only the date of typing of the notice is same but also the date of postal receipt and the time is also same, which is clear from the comparative examination of postal receipts Ex.P.4

and postal receipt Ex.D.4. On page no.4 of the cross-examination it has been deposed by the complainant that he does not know whether his uncle had filed any case against the accused Rajesh. He has further deposed that he does not know whether his uncle had filed the case against the accused through same advocate and whether the notice was sent on the same date or not or whether the case was filed on the same date or not. Very strange deposition has been made by the complainant and in view of the above discussion, it is held that these strange deposition cannot come to the rescue of the complainant rather, will go against him as it is not probable that a nephew does not know the case of his uncle, particularly when the case has been filed on the same date and the notice and all other transaction/proceedings of two cases have taken place simultaneously. So, it is held that the complainant PWI Bhupinder Singh is not a reliable witness.”

8 In view of the above factual as well as legal discussion, this Court can safely conclude that there is no merit in the instant appeal, therefore, the order of acquittal is, hereby, maintained and the instant application for grant of leave to appeal is **dismissed**.

March 05, 2024

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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether Reportable:- Yes/No