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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-442-2022 (O&M)
Date of Decision: 10.01.2024

KULJIT SINGH

-APPLICANT

Versus

BALJIT KUMAR

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Dilpreet Singh Gandhi, Advocate
for the applicant.

KULDEEP TIWARI, J. (ORAL)

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1. Considering the valid and good reasons, as recorded in the instant application, for condoning the delay of 255 days, the instant application is allowed.
2. Delay of 255 days in filing the appeal is condoned.

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3. The instant application, seeking grant of leave to appeal, is directed against the order of acquittal dated 09.05.2019, rendered by learned Judicial Magistrate Ist Class, Amritsar, whereby, the respondent has been acquitted of the notice of accusation, as served upon him, in a complaint made under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act').

FACTUAL MATRIX

4. The roots of the instant application can be traced to a

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complaint, as made under Section 138 of the N.I. Act, by the present applicant/complaint against the respondent. The gist of the said complaint, as encompassed in paragraph No.3 of the impugned order of acquittal, is extracted hereinafter:-

“Succinctly, the case of complainant is that complainant was having cordial and friendly relations with the accused and accused approached to complainant and requested him to advance friendly loan to the tune of Rs.11,50,000/- as accused has friendly relations with the complainant, with an assurance to repay the same to the complainant, on demand. Thereafter the complainant advanced an amount of Rs.11,50,000/- to the accused and accused assured the complainant that he will repay the same within a short span. The accused in order to discharge his legal debt and liability, issued one cheque bearing No.680882 dated 29.09.2016 for Rs.6,50,000/- drawn on State Bank of Patiala, District Gurdaspur in favour of complainant, with an assurance that the said cheque being good for payment would be duly honoured as and when presented. On the assurance given by the accused, the complainant presented the said cheque to the banker of the accused through his banker i.e. HDFC Bank, Branch Jalandhar Road, Batala. However, the banker of the accused returned the said cheque with remarks “Insufficient Funds” vide memo dated 16.12.2016. Thereafter, complainant served the accused with legal notice dated 02.01.2017 through Registered A.D. post, but despite the service of legal notice, accused has failed to make the payment to complainant till date.....”

5. Consequent to the making of the complaint (supra), the learned trial Court concerned, after analyzing the preliminary evidence of the complainant/present applicant, summoned the respondent, vide order dated 05.04.2017, to face trial for the offence punishable under Section 138 of the N.I. Act.

6. In order to substantiate his allegations against the respondent, the complainant/present applicant examined himself as CW1 and also

proved on record documents exhibited as C1 to C5.

7. After completion of complainant's/present applicant's evidence, statement of the respondent, under Section 313 Cr.P.C., was recorded, wherein, he pleaded innocence and denied all the allegations, as leveled against him. He specifically denied the obtention of any loan to the tune of the disputed cheque amount and pleaded that he had only taken an amount of Rs.60,000/-, which too has already been repaid by him. Insofar as the disputed cheque is concerned, he pleaded that the complainant/present applicant had received three blank signed cheques from him, as security in lieu of Rs.60,000/-, however, even despite full and final repayment, the complainant/present applicant did not return the said cheques, rather made misuse thereof by filing huge amount therein. Moreover, in defence evidence, the respondent examined two witnesses, i.e. DW1 Rajesh Pathania, Clerk of PNB Jaintipur, Amritsar, who proved on record documents exhibited as DW1/1 to DW1/4, and, DW2 Amarjit Singh Randhawa, Clerk of PNB, Dhariwal, who also proved on record documents exhibited as DW2/A and DW2/B.

8. After completion of trial and upon appreciation of the entire evidence available on record, the learned trial Court drew the impugned order of acquittal, thereby acquitting the respondents of the notice of accusation.

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPLICANT

9. The learned counsel for the applicant, in his challenging the acquittal of the respondent, has argued that despite the complainant/present applicant discharging his onus of proof by establishing all the requisite ingredients to bring home the guilt of the respondent, yet the learned trial

Court concerned has erred in acquitting the respondent, on the bedrock of whimsical grounds. He has further argued that once the respondent has himself admitted the factum qua issuance of the disputed cheque to the complainant/present applicant, besides when he has acknowledged his signatures thereon, there was no occasion for the learned trial Court to record an exculpatory verdict in favour of the respondent. Lastly, he has argued that since the respondent did not revert to the legal notice served upon him, therefore, a statutory presumption arose against him, which remained unrebutted by him through adduction of cogent evidence and as such, he ought to have been held by the learned trial Court concerned.

ANALYSIS

10. Before embarking upon the process of ascertaining the validity of the impugned order of acquittal, it is deemed imperative to capture an overview of some significant legal propositions.

11. There is no dispute that this Court can re-appreciate the entire evidence while dealing with an order of acquittal. The High Court has full power to appreciate the entire evidence to reach its own conclusions and it is also open for the High Court, to re-determine the question of facts and law. For this, we place reliance upon the judgment passed by Hon'ble Supreme Court in *State of Maharashtra vs. Sujay Mangesh Poyarekar*, 2008 (9) SCC 475.

12. Also, Hon'ble Supreme Court in *Chandrappa vs. State of Karnataka*, 2007(2) RCR (Crl.) 92 laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are as under:

“(1) An appellate Court has full power to review,

reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court, based on the evidence before it, may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

13. 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.***

14. On the touchstone of the hereinabove extracted legal propositions, this Court has, with the able assistance of the learned counsel

for the applicant, made a meticulous survey of the impugned order of acquittal, which is indeed anchored upon successful rebuttal of the presumption, under Section 139 of the N.I. Act, by the respondent, besides is anchored upon failure of the complainant/present applicant to discharge his onus of proof. However, the impugned order of acquittal does not appear to be tainted with any illegality or perversity. The reasons for forming this inference are elucidated hereinafter.

15. The primary reason for forming the above inference ensues from the factum that the complainant/present applicant has failed to furnish any details with regard to the lending of the alleged loan amount to the respondent. Moreover, during the course of cross-examination, it was categorically admitted by the complainant/present applicant that his ITRs exhibited as D1 to D3 do not make any bespeaking qua lending of the alleged friendly loan to the respondent.

16. The relevant extract of the impugned order of acquittal, which elaborates the inference drawn hereinabove and resultantly demolishes the case of the complainant/present applicant, is reproduced hereinafter:-

*“... Now it is burden upon the complainant to prove his version that he has given friendly loan of Rs. 11,50,000/- beyond any shadow of reasonable doubt. But perusal of cross-examination of complainant reveals that it is admitted by the complainant during his cross-examination that **I do not remember the date but in the month of June 2016 I had given the alleged loan to the accused. I do not remember whether this fact is mentioned in the legal notice as well as in my complaint...** I have brought ITRs for the year 2015-16, 2016-17 and 2017-18 which are Ex D1 to D3. It is correct that in my ITRs Ex. D1 to D3 I have not shown any loan amount passed to the accused by me... I have given the alleged friendly loan in the presence of my friend Bhupinder Singh Randhawa but I have not mentioned this fact in both the complaints and legal notice. After*

*going through these lines of the cross-examination of complainant and further evidence produced on record by the accused, this Court is of the considered view that complainant has miserably failed to prove the transaction of friendly loan of Rs. 11,50,000/- between the complainant and accused by producing on record any writing between complainant and accused regarding this loan and it is admission of the complainant that he has given friendly loan to the accused in the presence of Bhupinder Singh Randhawa but complainant has not examined this witness namely Bhupinder Singh Randhawa to prove this fact, therefore, this Court is of the considered view that complainant has failed to prove his version against the accused beyond any shadow of reasonable doubt. It is held by **Hon'ble Supreme Court in case Vijay Versus Laxman, 2013 (1) RCR (criminal)** where in it is held by Hon'ble Supreme Court that according to complaint, cheque was issued by the accused in repayment of loan. No documentary or other material was brought or record to prove loan transaction. Date of demand of loan and giving of loan not stated in the complaint. It is fatal....”*

17. As a sequel to the discussion made hereinabove, this Court comes to a conclusion that since the complainant/present applicant had failed to discharge his onus of proof that the disputed cheque was issued by the respondent in lieu of his legally recoverable debt, therefore, the reasoning given in the impugned order of acquittal does not suffer from any gross perversity or absurdity of mis-appreciation and non-appreciation of the evidence on record.

18. Moreover, since it is a trite law that order of acquittal should not be disturbed unless there are substantial or compelling circumstances, therefore, this Court does not find any concrete ground to interfere with the order of acquittal. Consequently, the instant application, seeking grant of leave to appeal, is hereby **dismissed**, it being bereft of merits, and, the **impugned order of acquittal**, rendered by learned Judicial Magistrate Ist

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Class, Amritsar, is hereby **upheld**.

19. The case property, if any, be dealt with in accordance with law.

The record, if any, be also forthwith sent down.

(KULDEEP TIWARI)
JUDGE

10.01.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No