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

**CRA-S-1528-SBA-2003
Date of Decision:13.05.2024**

Kumar Finance Company

...Applicant

Vs.

Sarvjeet Singh

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Deep Inder Singh Walia, Advocate with
Ms. Gursimaran Walia, Advocate
for the applicant.

Ms. Priyanka Vij, Advocate for
Mr. Nitin Singhal, Advocate
for the respondent.

N.S.Shekhawat J.

1. The applicant has filed the present application under Section 378 (4) Cr. P.C with a prayer to grant special leave to appeal from the impugned judgment dated 28.08.2002, passed by the Court of Judicial Magistrate Ist Class, Kurukshetra, whereby the respondent was ordered to be acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act").

2. The applicant/complainant, Finance Company, had filed the complaint under Section 138/142 of the "Act" read with Section 420 of IPC against Sarvjeet Singh, respondent/accused with the allegations that the respondent had borrowed a sum of Rs.50,000/- from the applicant/complainant on 05.05.1994 and the respondent had agreed to pay the said amount in 12 equal monthly instalments of Rs.5167/- per month with interest. In lieu of the



said loan, the respondent had also hypothecated his Maruti Car No.HIS-2437 in favour of the applicant. As per the agreement, the respondent was to pay the instalment of Rs.5167/- per month to the applicant, but the respondent did not pay even a single instalment. Three instalments were due on 05.06.1994, 05.07.1994 and 05.08.1994. Ultimately, on request of the applicant, the respondent had issued a cheque bearing No. SB/R-383152, dated 04.11.1994 for a sum of Rs.66,500/-, drawn on Allahabad Bank, Kurukshetra. The applicant presented the said cheque to its banker, but vide memo dated 07.11.1994, the said bank had returned the cheque as dishonoured for want of sufficient funds in the account of the respondent. The applicant issued a notice dated 12.11.1994 by registered post to the respondent to make the payment within a period of 15 days of receipt of the intimation. The said notice was duly received by the respondent, but he failed to make the payment equal to the amount of cheque in question and the applicant had filed a criminal complaint against the respondent.

3. In the preliminary evidence, the applicant examined its partner Sh. Raminder Singh as CW-1 and after exhibiting certain documents, the evidence was closed. The respondent was summoned and after his appearance, notice of accusation was served on him and he pleaded not guilty and claimed trial. In the after-charge evidence, the applicant company examined Sh. Raminder Singh as PW-1, who had proved the cheque as Ex.C-1, memo of bank as Ex.C-2, registered notice as Ex.C-3, acknowledgement as Ex.C-4, writing as Ex.C-5 and postal receipt as Ex.C-6. Surinder Kumar Clerk, Allahabad Bank, Kurukshetra appeared as PW-2 and proved the bank record regarding the dishonour of the cheque. PW-3, Kulbhushan Kumar Sharma, Officer of Allahabad Bank,



Kurukshetra exhibited the memo regarding the dishonour of the cheque in the present case.

4. After the closure of the evidence of the applicant, the statement of the respondent/accused was recorded under Section 313 Cr.P.C and he pleaded his false implication in the present case. Naseeb son of Narata Ram, appeared as DW-1, who stated that he knew Sarvjeet Singh, his co-villager. He was having a tractor and car. He knew Kumar Finance Company and Sarvjeet Singh had taken a loan of Rs.50,000/- from the finance company. Due to damage to his crops, he could not make the payment of the amount and thereafter, the finance company moved an application before the police station and he also went to the police station. In the presence of 10/15 more persons, a settlement had taken place between the parties and Sarvjeet Singh had agreed to pay the amount back to the finance company in November, 1994. On 14.11.1994, he and Sarvjeet Singh, respondent made a payment of Rs.40,000/- to Kumar Finance Company at Railway Road, Kurukshetra and demanded a blank cheque from them, which was given by the respondent. However, the officials of Kumar Finance Company told them to pay the balance amount of Rs.25,000/- to the *Sadhu* (co-brother) of the partner of the Kumar Finance Company and told them to collect the receipt and cheque from him. After one week, Sarvjeet Singh, respondent made payment of remaining amount of Rs.25,000/- to Amrik Singh, who was *Sadhu* (co-brother) of the owner of the Kumar Finance Company, in the presence of the witness and the respondent demanded back the cheque and receipt from Amrik Singh. However, inspite of taking the whole amount, the cheque and receipt issued by the respondent were not returned to him and were misused by the applicant.



5. Learned counsel for the applicant vehemently argued that while passing the impugned judgment the Trial Court had completely brushing aside the evidence and wrongly recorded the judgment of acquittal in the present case. In fact, the Trial Court wrongly acquitted the respondent on the ground that the respondent had had not issued the cheque in question for an amount of Rs.66,500/- and it was availed by the applicant in order to involve the respondent in the present case. However, the said finding was contrary to the stand taken by the respondent in his statement under Section 313 Cr. P.C. In fact, the respondent had admitted the fact that the cheque was issued by him in order to discharge the liability. Still further, the Trial Court also failed to appreciate that the notice dated 12.11.1994 Ex.C-3 and acknowledgement receipt as Ex.C-4 were duly signed by Sarvjeet Singh, respondent and thereafter, the complaint was filed in the Court on 28.11.1994. Thus, the complaint was not pre-mature in the instant case. Even otherwise, in a pre-mature complaint, the Court should have waited for the maturity of the complaint and the cognizance could have been taken after that. Learned counsel further submitted that the cheque of Rs.66,500/- was issued by the respondent in discharge of his legal liability and the said fact was admitted by the respondent himself. Thus, the impugned judgment is legally unsustainable.

6. On the other hand, learned counsel appearing on behalf of respondent vehemently argued that the impugned judgment is based on correct appreciation of evidence led by the parties and the settled law and the impugned judgment is legally sustainable.

7. I have heard learned counsel for the parties and have gone through the file of the case carefully.



8. In the present case, the applicant had set up a case that the respondent had availed a sum of Rs.50,000/- from the applicant on 05.05.1994 and had agreed to pay the loan amount in 12 equal monthly instalments amounting to Rs.5167/- per month along with interest. During the course of evidence, the ledger book of the applicant was exhibited as Ex.D-1. As per the said ledger book, the respondent had taken a loan of Rs. 50,000/- and was liable to pay interest at the rate of 24% per annum i.e. Rs.12,000/- as interest to the applicant and cheque bearing No.ABS 172023 was taken by the applicant at the time of giving an amount of Rs.50,000/- as loan to the respondent. Even from the ledger book, it is apparent that the amount in question was to be re-paid by the respondent in 12 equal monthly instalments of Rs. Rs.5167/- and the loan was to be cleared within a period of 12 months. However, when the amount was not paid back by the respondent to the applicant/complainant, the applicant company used the cheque in question and presented the same for encashment. This itself makes it clear that the cheque No. ABS 172023 was handed over by the respondent to the complainant company at the time of given the amount of Rs.50,000/- to the accused. However, the cheque bearing No. SB/R-383152, which was dishonoured in the present case, was a different cheque. This clearly proves that when the respondent could not re-pay the amount, the applicant/complainant used the blank cheque bearing No. SB/R-383152 by filling therein an amount of Rs.66,500/- In fact, on 04.11.1994, there was no occasion for the respondent to give a cheque of Rs.66,500/- in favour of the applicant/complainant. Still further, it is apparent that the blank cheque bearing No. SB/R-383152 was already lying with the applicant and by mis-using the said cheque, the same was presented for encashment by the



applicant/complainant. Even otherwise, the applicant/complainant could not lead any evidence that an amount of Rs.66,500/- was outstanding against the applicant and the findings recorded by the Trial Court are upheld in this regard.

9. Still further, as per the provisions contained under Section 138 of the “Act”, a complaint under Section 138 of the “Act” must containing the following ingredients:-

- (i) that there is a legally enforceable debt;*
- (ii) the cheque was drawn from the account of the bank for discharge in whole or in part of any other debt or other liability, which pre-supposes a legally enforceable;*
- (iii) cheque so issued had been returned due to insufficiency of funds:*

10. In the present case, as per the applicant/complainant, the present respondent had taken a sum of Rs.50,000/- as loan on 05.05.1994. As per the record of the applicant, the said amount was to be returned within a period of 12 months and the total amount to be re-paid was Rs.62,000/-and was not Rs.66,500/-. Still further, the loan in the present case was taken on 05.05.1994 and the amount was lent for a period of 01 year i.e up to 04.05.1995. Consequently, the respondent had no occasion to pay a sum of Rs.66,500 on 04.11.1994 in favour of the applicant.

11. Still further, the Trial Court has also held that the complaint in the present case was pre-mature and there was no authorisation in favour of the partner of the applicant firm and had recorded the following findings:-

17.Next point raised before this court is as to whether legal notice Ex.C-3 was duly served upon the accused prior to the filing of the present complaint. It is made clear that the legal notice was issued



on 12.11.1994 as alleged, with the request to make the payment of the cheque in question within a period of 15 days from the receipt of the notice, but the A.D. does not bear the signature of Saravjit, nor the notice was duly sent through registered A.D. well within the period of 15 days, nor it was served upon the accused. Until otherwise, the complainant should have given sufficient time to the accused for making payment of the alleged cheque, on receipt of legal notice by him, but without awaiting for a period of 15 days, the complainant has filed the present complaint on 28.11.1994 i.e. after a lapse of 16 days from the date of issuance of the notice. It does also clear that the complainant has also not given sufficient time for making payment of the amount of cheque in question, to the accused. pre-matured Therefore, the present complaint can be said to be pre-matured one and the legal notice was not duly complied with as provided under section 138 (C) of the Negotiable Instruments Act. On this ground also, accused is entitled to acquittal.

18.The next question arises before me as to whether Shri Raminder Singh, one of the partner of the complainant company, has any locus-standi to file the present complaint against the accused. The complainant has not produced any Partnership Deed etc. on the file in order to prove the factum that he is one of the Partner of the Company or not. It is the bounden duty of the prosecution to prove its case against the accused beyond shadow of reasonable doubt, but due to non-production of Partnership Deed etc., it cannot be said that Raminder Singh is one of the partner of the complainant Company. On this score also, accused is entitled to acquittal.

12. I have perused the abovesaid findings recorded in the present case and find no reasons to deviate from the same. In the present case, it is apparent that the complainant had filed a complaint pre-maturely and even no authorisation in favour of the applicant was placed on record before the Trial



Court. Consequently, the complaint was rightly held to be not maintainable and has been correctly dismissed by the Trial Court.

13. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** 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. v. 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 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 reappraisal, 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 reappraisal 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."

14. 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.”

15. Consequently, the impugned judgment dated 28.08.2002, passed by the Court of Judicial Magistrate Ist Class, Kurukshetra, is ordered to be upheld.
16. Thus, findings no merits, the application for grant special leave to appeal is dismissed.
17. Pending application(s), if any,are also disposed off.
18. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

13.05.2024
hitesh

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

(N.S.SHEKHAWAT)
JUDGE