

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

SR. No.245

**CRM-A-920-2023 (O&M)
Decided on:06.08.2024**

Jitender Kumar**...Applicant****Versus****Sunil Nagar****...Respondent****CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. Parveen Gaur, Advocate
for the applicant.

N.S. SHEKHAWAT, J.**CRM-28104-2023**

1. Applicant prays for condonation of delay of 49 days in filing the application for grant of special leave to appeal.

2. For the reasons mentioned in the application, the same is allowed. The delay of 49 days in filing the appeal is condoned.

CRM-A-920-2023

1. The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure with a prayer to grant special leave to appeal against the impugned judgment dated 16.03.2023 passed by the Court of Judicial Magistrate 1st Class, Faridabad, whereby the complaint under Section 138 of the Negotiable Instrument Act, 1881 (for short 'NI Act'), filed by the present applicant/complainant, was ordered to be dismissed and accused/respondent was acquitted of the charge.

2. As per the allegations levelled by the applicant/complainant in the complaint, respondent/accused had entered into an agreement to sell



yards, forming part of the land comprised in Khewat No. 241, Khatoni No.294, Rectangle No.73, Killa No.3/3/2(1 Kanal 13 Marla), 3/4 (1 Kanal 0 Marla), situated at village Mauza Bhupani, Sub Tehsil Tigaon, District Faridabad. The applicant was the owner of the said plot by virtue of sale deed bearing No.13619 dated 23.10.2012 and mutation No.4573. It was further stated in the complaint that out of total sale consideration of Rs.12,00,000/-, the respondent had paid only a sum of Rs.2,00,000/- on 10.01.2018 and the cheque was duly encashed by the applicant. Thereafter, admitting his legal liability to make the payment of balance sale consideration of Rs.10,00,000/-, the respondent had issued a cheque in question bearing No. 070878 dated 09.05.018 for a sum of Rs.10,00,000/- in favour of the applicant. The applicant presented the said cheque with his banker and the said cheque was dishonoured with the remarks “funds insufficient”. Thereafter, the applicant got a legal notice issued to the respondent, still the respondent did not make any payment and after completing the formalities, the complainant filed a complaint under Section 138 of the NI Act against the respondent.

3. In the preliminary evidence, the applicant/complainant Jitender Kumar appeared before the trial Court as CW-1 and the following documents were exhibited:-

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|--------|---|
| Ex.C1: | Cheque in question |
| Ex.C2: | Cheque return memo |
| Ex.C3: | Legal notice |
| Ex.C4: | Postal receipt |
| Ex.C5: | Sale deed bearing No.13619 dated 23.10.2012 |
| Ex.C6: | Mutation bearing No.4573 |
| Ex.C7: | Agreement to sell dated 08.01.2018 |
| Ex.C8: | Payment receipt |



4. Thereafter the respondent was summoned under Section 138 of the NI Act and after his appearance, a notice of accusation was served on him. After summoning, the applicant was cross-examined by the respondent and the evidence of the applicant was concluded.

5. In his defence, the respondent examined himself as DW-1. Rajinder Sharma was examined as DW-2 and following document was exhibited:-

Ex.D1: Letter issued by the bank to the accused regarding “stop payment” of the cheque in question.

6. Learned counsel for the applicant vehemently argued that the cheque amounting to Rs.10,00,000/- dated 09.05.2018 was issued by the respondent in order to discharge his liability and the same was dishonoured on the ground of “funds insufficient”. Even after issuance of legal notice, the respondent had failed to make payment of the said cheque. Further the respondent had not disputed his signature on the cheque in question and even the liability was admitted in the shape of an agreement to sell, which was executed by the respondent himself. Thus, the impugned judgment is legally unsustainable.

7. I have heard learned counsel for the applicant and perused the record carefully.

8. In the present case, the main claim of the applicant rests on the execution of an agreement to sell Ex.C7, wherein, it has been stated by the complainant that he was in possession of the plot in question and the possession had been handed over to the respondent. However when the applicant appeared for his cross-examination, he categorically admitted that he had never been in possession of the plot in question. Even he had not



filed any complaint or suit for possession against the previous owner for the possession of the plot. He also admitted that in pursuance of the agreement to sell, he had not handed over the possession of the said plot to the respondent. Thus, there was sufficient evidence to show that the applicant had failed to hand over the possession to the respondent. It was further admitted that the witness of the agreement to sell, namely, Abhey Singh had told him not to present the said cheque with the bank for encashment, still he presented the cheque with his banker. Thus, neither the possession of the suit property was handed over to the respondent nor any sale deed was executed. Apart from that, the respondent had examined Rajinder Sharma as DW-2, who is an independent witness and he stated that the agreement to sell was executed between the parties with his mediation and he had also signed the agreement to sell Ex.C7. It was also agreed between the parties that the possession shall be handed over by the respondent to the applicant, but the possession was never handed over to the applicant and he was bound to claim as above.

9. 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."

10. 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."



11. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the impugned judgment. Accordingly, the present application for grant of special leave to appeal is ordered to be dismissed, being devoid of any merits. Pending application(s), if any, shall also stand disposed off, accordingly.

06.08.2024
mks

(N.S.SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO